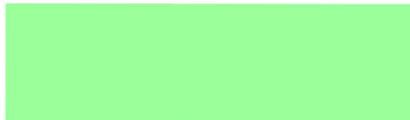


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



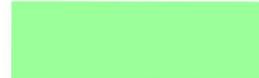
U.S. Citizenship
and Immigration
Services



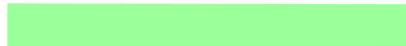
DATE: Office: NATIONAL BENEFITS CENTER

SEP 05 2013

FILE:



IN RE: Applicant:



APPLICATION: Application for Status as a Permanent Resident Pursuant to Section 13 of the Immigration and Nationality Act of 1957, Pub. L. No. 85-316, 71 Stat. 642, as amended.

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron M. Rosenberg".

Ron M. Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, National Benefits Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a native and citizen of Pakistan who is seeking to adjust his status to that of lawful permanent resident under section 13 of the Act of 1957 ("Section 13"), Pub. L. No. 85-316, 71 Stat. 642, as amended, 95 Stat. 1611, 8 U.S.C. § 1255b, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

The director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent his return to Pakistan. The director also noted that the U.S. Department of State issued its opinion on February 2, 2013 recommending that the applicant's request for adjustment of status in the United States be denied because the applicant presented no compelling reasons why he is unable to return to Pakistan. *See Director's Decision*, dated February 19, 2013.

The director also denied the application of the applicant's spouse [REDACTED] and his son [REDACTED] who each submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) under Section 13 as derivative dependents of the applicant. The director issued separate decisions denying these applications. These dependents each filed a separate Form I-290B, Notice of Appeal or Motion. The AAO will issue a separate decision for each of the dependents.¹

On April 17, 2013, the applicant submitted a Form I-290B, Notice of Appeal or Motion indicating at Part 2 that he is filing an appeal of the Form I-485 which was denied on February 19, 2013. The applicant asserts that the director's decision "overlooks, and discards the paramount issue of sectarian strife that is causing mayhem in civil stability in Pakistan in particularly to Karachi. . ."

The appeal will be rejected because the appeal was untimely filed. In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

In this case, the record reflects that the director issued the decision denying the Form I-485 on February 19, 2013. The applicant filed a Form I-290B, with the appropriate agency on April 17, 2013, Fifty-Eight (58) days after the decision was issued. Accordingly, the appeal was untimely filed.

¹ The record reflects that the applicant has two other dependents whose applications for adjustment of status were also denied. These other dependents did not file a Form I-290B to appeal the director's decision.

If an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the director, National Benefits Center. 8 C.F.R. § 103.5(a)(1)(ii). As required by 8 C.F.R. § 103.3(a)(2)(ii)-(iv), the director reviewed the appeal prior to forwarding it to the AAO, and did not conclude that it met the requirements of a motion or otherwise warrant favorable action. Therefore, the untimely appeal must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

ORDER: The appeal is rejected.