



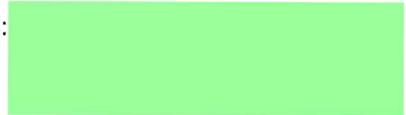
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: Office: NATIONAL BENEFITS CENTER FILE:

SEP 27 2013

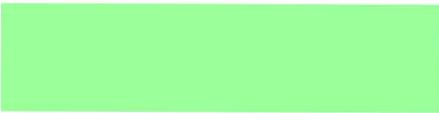


IN RE: Applicant:



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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron M. Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, National Benefits Center and the Administrative Appeals Office (AAO) dismissed a subsequently filed appeal, and a subsequently filed motion. The matter is again before the AAO on a second motion to reopen or reconsider. The motion will be dismissed. The application remains denied.

The applicant is a native and citizen of Bangladesh who is seeking to adjust his status to that of a 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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The director denied the Form I-485, Application to Register Permanent Residence or Adjust Status after determining that the applicant had failed to demonstrate that compelling reasons prevent his and his family's return to Bangladesh. The director also noted that the U.S. Department of State issued its opinion on June 23, 2011, recommending that the applicant's adjustment of status be denied because the applicant has failed to provide compelling reasons why he cannot return to Bangladesh. *Decision of the Director*, dated June 11, 2012.

On October 5, 2012, the AAO, upon a *de novo* review of the evidence of record determined that the applicant was not eligible for a Section 13 benefit because the applicant failed to demonstrate that his position and his duties as a [REDACTED] at the Bangladesh Mission to the United Nations in New York were diplomatic or semi-diplomatic in nature and that the applicant failed to present compelling reasons why he cannot return to Bangladesh. The AAO dismissed the appeal accordingly.

On March 28, 2013, the AAO dismissed the applicant's motion to reopen and reconsider. In dismissing the motion, the AAO noted that the record on motion did not include any new facts and that the applicant's affidavit did not satisfy either the requirements of a motion to reopen or a motion to reconsider. The AAO determined that the applicant failed to establish that he performed diplomatic or semi-diplomatic duties, and failed to demonstrate that there are compelling reasons that preclude his return to Bangladesh.

The AAO also dismissed the appeal and subsequent motion to reopen and reconsider filed by the applicant's spouse [REDACTED], who has filed a second motion to reopen and reconsider. The AAO will issue a separate decision for the applicant's spouse.

On April 30, 2013, the applicant filed the current motion to reopen and reconsider and submitted a brief from counsel in support of said motion. The AAO will dismiss this motion because the applicant has failed to satisfy the requirements for a motion to reopen and to reconsider.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

On motion, counsel for the applicant requests that the AAO reconsider what constitutes semi-diplomatic duties and what constitutes compelling circumstances when adjudicating Section 13 claims. Counsel restated the same factual allegations regarding the applicant's duties at the Mission of Bangladesh to the United Nations in New York, which counsel had submitted before. On current motion counsel asserts that "the applicant was specifically assigned as the [REDACTED] to the UN Ambassador, a sensitive position, working closely with the Ambassador in his diplomatic duties, and the applicant was involved with other diplomats in their dealings with other countries in connection with the UN mission." Counsel does not submit any documentation that describes in detail the applicant's duties in his role as secretary at the Mission of Bangladesh to the United Nations in New York.

The AAO notes that counsel's assertions on motion regarding the applicant's duties are inconsistent with his designation as a [REDACTED]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO also notes that although counsel claimed on motion that the applicant's duties are semi-diplomatic duties, the record does not contain any documentation to support counsel's claim.

The applicant has not provided any reasons for reconsideration that are supported by pertinent precedent decisions to establish that the AAO's prior decisions were based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy. The applicant has also failed to provide pertinent precedent decisions or evidence to establish that the AAO's decision was incorrect based on the evidence of record at the time of the initial decision or established that the director or the AAO misinterpreted the evidence of record. Therefore the motion shall be dismissed.

The motion shall also be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

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NON-PRECEDENT DECISION

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It is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The applicant has not sustained that burden. Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed. The previous decisions of the AAO are affirmed. The application remains denied.