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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
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 FILE: [REDACTED]

SEP 27 2013

[REDACTED] - MOTION

IN RE: Applicant: [REDACTED]

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,

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 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 and reconsider. The motion will be dismissed. The application remains denied.

The applicant is a native and citizen of Bangladesh who is seeking to adjust her 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 a derivative dependent spouse of 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 application for adjustment of status of the applicant's spouse after determining that the applicant's spouse 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. The director denied the applicant's adjustment application on the basis of her spouse's ineligibility for benefits under Section 13.

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

On March 28, 2013, the AAO granted the applicant's spouse's motion to reopen and reconsider its previous decision and upon review of the information presented on motion, affirmed its decision to dismiss the appeal. As the applicant's eligibility for adjustment under Section 13 derives from the eligibility of her spouse, and the applicant has not provided new facts or pertinent precedent decisions separate from those claimed by her spouse, the AAO's previous decision dismissing the applicant's appeal is also affirmed.

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 reviewed the evidence submitted by the applicant's spouse in support of his current motion and found it insufficient to satisfy the requirements for a motion to reopen and a motion to reconsider. The AAO affirmed its previous decision and dismissed the applicant spouse's motion. As the applicant's eligibility for adjustment under Section 13 derives from the eligibility of her spouse, and the applicant has provided no new facts or evidence separate from those claimed by her spouse, the AAO will affirm its previous decision and dismiss the applicant's current motion.

In visa petition proceedings, 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 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.