



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: Office: NATIONAL BENEFITS CENTER FILE: [REDACTED]

SEP 27 2013

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:

[REDACTED]

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. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed. The application remains denied.

The applicant is a native and citizen of Pakistan 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)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

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 he performed diplomatic or semi-diplomatic duties; that compelling reasons prevent his return to Pakistan; and that his adjustment of status would be in the national interest of the United States. The director also noted that the U.S. Department of State issued its opinion on March 15, 2011, recommending that the applicant's adjustment of status be denied because the applicant did not perform diplomatic or semi-diplomatic duties and presented no compelling reasons preventing his return to Pakistan. *Decision of the Director*, dated March 22, 2012.

On April 3, 2013, 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 had failed to demonstrate that his position and his duties as [REDACTED] at the Consulate General of Pakistan in New York was diplomatic or semi-diplomatic in nature and that the applicant failed to present compelling reasons why he cannot return to Pakistan. The AAO affirmed the director's decision and dismissed the appeal accordingly.

On May 3, 2013, counsel for the applicant submitted a Form I-290B, Notice of Appeal or Motion and indicated at part 2E of the form that he is filing a motion to reopen and reconsider the AAO's decision of April 3, 2013. Counsel stated at part 3 of the form "please note that [REDACTED] wife and four children are also filing for the denial of their Adjustment of Status under Section 13 of the INA. Their names and file numbers are as follows: [REDACTED]

[REDACTED] and [REDACTED].” Counsel does not submit a separate Form I-290B for each of the dependents.¹ The AAO shall treat this Form I-290B as pertaining only to the applicant's motion to reopen and reconsider and will not issue any decision for each of the dependents.

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

¹ The applicant bears the burden of completing the Form I-290B accurately and according to its instructions. See 8 C.F.R. § 103.2(a)(1). In addition, for each adverse decision, an applicant must submit a separate Form I-290B and associated fee. See 8 C.F.R. § 103.3(a)(1).

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 the current motion, counsel does not provide any new facts to be discussed in the motion to reopen. Counsel merely restated the same factual allegations he had presented before regarding the applicant's duties at the Consulate General of Pakistan in New York, which the AAO had reviewed and dismissed as insufficient evidence. Counsel claims that the applicant "was responsible for assisting the Consul General with his duties developing diplomatic relationships with the Pakistani Embassy and Consulates..." Counsel contends that these duties are semi-diplomatic in nature. Counsel however, does not provide any document containing a detailed description of the applicant's duties and responsibilities and demonstrate convincingly that the duties are semi-diplomatic in nature.

We note that counsel's assertions on motion regarding the applicant's duties are inconsistent with his designation as a secretary. It is incumbent upon the applicant 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). We also note that although counsel claimed on motion that the applicant's duties are semi-diplomatic in nature, the record does not contain any documentation to support counsel's claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant has not provided any reasons for reconsideration that are supported by pertinent precedent decisions to establish that the AAO's prior decision was 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 another 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.

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 decision of the AAO is affirmed. The application remains denied.