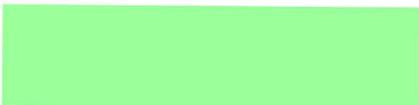


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **SEP 27 2013** Office: NATIONAL BENEFITS CENTER FILE: – MOTION

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. 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 lawful permanent resident under section 13 of the Act of 1957 ("Section 13"), Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, 8 U.S.C. § 1255b, as the derivative child 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 after determining that the applicant's father, the principal () had failed to demonstrate that compelling reasons prevent his and his family's return to Pakistan. The director also noted that the U.S. Department of State had recommended that the applicant's father's adjustment of status application be denied because he presented no compelling reasons why he is unable to return to Pakistan. The director denied the applicant's application accordingly. *Decision of the Director*, dated February 4, 2013.

On June 21, 2013, the AAO affirmed the director's determination that the applicant had failed to establish his eligibility for benefits under Section 13 of the Act because the applicant failed to establish compelling reasons that prevent his return to Pakistan. The AAO did not address the issue of whether the adjustment of status of the applicant will serve U.S. national interest.

On July 22, 2013, counsel for the applicant filed a motion to reopen and to reconsider. On motion, counsel asserts that the director's denial was based on an unsupported and overly stringent reading of the statute. *Form I-290B, Notice of Appeal or Motion*, dated July 19, 2013. Counsel also asserts that the director selectively used portions of the applicant's father's 1996 interview testimony to deny the application without consideration to the entire testimony. Counsel contends that a reading of the entire testimony shows that the applicant's father could not return to Pakistan with his family because of lack of security in the area of Pakistan he came from. Counsel further contends that had the director reviewed the country condition information on Pakistan for 1995 as opposed to 2013, that the applicant's father would have established compelling reasons that prevented his and his family's return to Pakistan. Counsel however, does not provide any new statement or other new information from the applicant himself as to the reasons he is unable return to Pakistan. The applicant continues to rely on the 1996 testimony of the applicant's father in support of the applicant's claim. The AAO reviewed and found the testimony insufficient evidence to establish the applicant's eligibility for adjustment of status under Section 13 of the Act. The applicant does not state any new facts or reasons for filing the motion. The AAO will dismiss this motion.

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.

In this matter, the applicant has provided no new facts to be discussed in the motion to reopen. On the Form I-290B and the accompanying brief, counsel restated the same previously stated reasons. The applicant did not provide any new fact or evidence as to the reasons he cannot return to Pakistan. As the applicant has failed to provide new facts for consideration in the motion to reopen, the motion to reopen will be dismissed.

As for the motion to reconsider, the applicant does not provide 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 also fails 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 establishes that the director or the AAO misinterpreted the evidence of record.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the motion will be dismissed and the previous decision of the AAO will not be disturbed.

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