



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: Office: NATIONAL BENEFITS CENTER FILE:

AUG 04 2014

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. The appeal was dismissed by the Administrative Appeals Office (AAO). The AAO affirmed its dismissal decision in a subsequent motion to reconsider. The matter is again before the AAO on a motion to reopen. The motion will be dismissed, the previous decision of the AAO will not be disturbed and the application will remain denied.

The applicant is a native and citizen of the Republic of Congo (the Congo) 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 modified, 95 Stat. 1611, 8 U.S.C. § 1255b, as the derivative dependent child of an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(A)(i).

The director denied the application for adjustment of status after determining that the applicant had failed to establish compelling reasons that preclude her return to the Congo. The director noted that the U.S. Department of State issued its opinion on February 9, 2013 recommending that the adjustment of status application of the applicant be denied because the applicant had no compelling circumstances and that the principal, the applicant's father, returned to the Congo. *Decision of the Director*, dated March 28, 2013.

On September 5, 2013, the AAO rejected the appeal as it was untimely filed. On October 7, 2013, the applicant through counsel filed a motion to reopen. On May 12, 2014, the AAO dismissed the motion to reconsider. The AAO clearly stated the requisite standards for adjustment of status under Section 13; and, delineated the reasons for its dismissing the appeal, noting that the applicant had failed to establish compelling reasons that preclude her return to the Congo.

On the current motion to reopen, filed on June 18, 2014, counsel states, generally, that the AAO and USCIS incorrectly applied current law and policy under Section 13. Counsel also states that new facts will be provided within 30 days to establish that compelling reasons preclude the applicant's return to the Congo.

The applicant has not filed a proper motion to reopen or reconsider. Her request was not accompanied by any new evidence or arguments based on precedent decisions. A request for motion must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed. No provision exists for USCIS to grant an extension in order to await future correspondence that may or may not include evidence or arguments.

Pursuant to 8 C.F.R. § 103.5(a)(2), "[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." 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 USCIS policy. 8 C.F.R. § 103.5(a)(3). In addition, a motion to reconsider must establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

The applicant does not submit any evidence whatsoever on motion. Also, counsel does not submit a brief or any legal arguments in support of the motion.

In the instant matter, the applicant has provided no 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 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. On motion, the applicant has failed to provide evidence to overcome the grounds for the AAO's decision. The applicant on motion has failed to adequately and fully address whether the AAO's decision was incorrect as a matter of law, precedent decision or USCIS Service policy. Therefore the motion shall be dismissed.

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 to reconsider does not meet the applicable filing requirements, it must be dismissed.

The burden of proof in these proceedings rests solely with the applicant. 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 met 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 to reopen is dismissed. The director's prior decision of March 28, 2013 is affirmed. The application remains denied.

¹The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just *discovered*, found, or learned <*new* evidence>" *Webster's II Nw Riverside University Dictionary* 792 (1984)(emphasis in original).