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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: FEB 07 2014 Office: NATIONAL BENEFITS CENTER FILE:

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: SELF-REPRESENTED

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 (director), National Benefits Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motion will be dismissed.

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 the derivative dependent 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 Form I-485, Application to Register Permanent Residence or Adjust Status after determining that the applicant's father 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 issued its opinion on February 2, 2013, recommending that the adjustment of status application of the applicant's father be denied because he has failed to present compelling reasons that precludes his return to Pakistan. The director denied the applicant's adjustment of status application on the basis of his father's ineligibility for benefits under Section 13. *Decision of the Director,* dated February 19, 2013.

In a separate decision, the AAO upon a *de novo* review of the record dismissed the appeal of the applicant's father on the grounds that he failed to establish that he performed diplomatic or semi-diplomatic duties and that compelling reasons prevent his and his family's return to Pakistan.[1] As the applicant's eligibility for adjustment under Section 13 derives from the eligibility of his father, and the applicant had not provided new facts or evidence separate from those claimed by his father, the AAO determined that the applicant is also ineligible for adjustment of status and dismissed the appeal accordingly.

On motion, the applicant reasserts the same reasons as his father, to wit; he cannot live in Pakistan in the area where their house is located in the tribal area of Pakistan because the area is under the control of Taliban; that the family had indirectly received threats from Taliban; and that the Taliban will kill them upon return to Pakistan. The applicant requests that the AAO reconsider its decision on humanitarian grounds.

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

[1] The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

> 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 a separate decision, the AAO dismissed the motion filed by the applicant's father because he failed to meet all the requirements for a motion to reopen and to reconsider. The AAO left undisturbed its decision to dismiss the appeal and the director's decision to deny the application. As the applicant's eligibility for adjustment under Section 13 derives from the eligibility of his father, and the applicant has provided no new facts or pertinent precedent decisions demonstrating that the AAO's prior decision was incorrect as a matter of law or Service policy, the AAO will dismiss the applicant's motion and affirm its previous decision.

Furthermore, the motion shall 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 submission constituting the motion does not contain a statement as to whether or not the unfavorable decision has been or is the subject of any judicial proceeding as required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Thus, the applicant failed to comply with this requirement for properly filing a motion. Accordingly, the motion must be dismissed for this reason as well.

For the reasons discussed above, the AAO finds that the applicant has failed to meet the requirements of a motion. 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 reopen and 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. The applicant has not sustained that burden. Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.