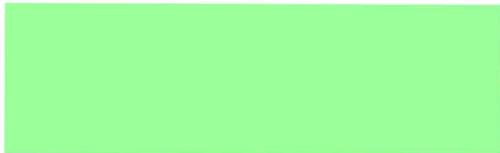


(b)(6)

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

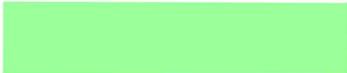


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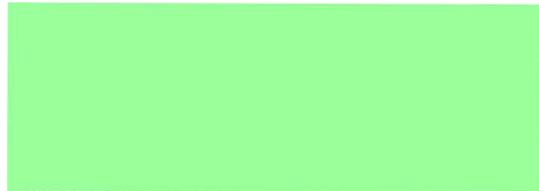


IN RE: Applicant:



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,

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 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 reconsider.¹ 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 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 application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent his return to Pakistan. The director also noted that the U.S. Department of State issued its opinion on November 30, 2012 recommending that the applicant's request for adjustment of status in the United States be denied because the applicant presented no compelling reasons that preclude his return to Pakistan. *See Director's Decision*, dated January 8, 2013.

On May 24, 2013, the AAO, upon a *de novo* review of the evidence of record determined that the applicant failed to meet his burden of proof to establish eligibility for adjustment of status under Section 13 of the Act.² Specifically, the AAO determined that the applicant failed to establish that compelling reasons prevent his and his family's return to Pakistan. The AAO dismissed the appeal accordingly.

On June 26, 2013, the applicant submits a Form I-290B, Notice of Appeal or Motion requesting the AAO to reopen and reconsider its decision of May 24, 2013. The applicant asserts that he has presented compelling reasons why he and his family cannot return to Pakistan. The applicant submits a brief and copies of on-line news articles dated in 2013 about kidnapping for ransom in Pakistan in support of the 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:

¹ On the Form I-290B submitted on June 26, 2013, the applicant checked Box A, which states "I am filing an appeal. My brief and/or additional evidence is attached. The AAO exercises appellate jurisdiction over only the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). See DHS Delegation Number 0150.1(effective March 1, 2003). A motion, rather than an appeal, is the proper forum in this case. Therefore, the AAO will consider the current filing as a motion to reopen and a motion to reconsider its May 24, 2013 decision.

² 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).

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 motion, the applicant provides no new facts supported by affidavits or other documentary evidence as required for a motion to reopen. 8 C.F.R. § 103.5(a)(2). Based on the plain meaning of “new,” a new fact is found to be evidence that was newly submitted, previously unavailable, and could not have been discovered or presented in the previous proceeding.³ In addition, new facts must be relevant and have probative value. In this matter, the applicant has presented no new facts to be reopened; rather, the applicant reiterates his earlier assertions as to why he cannot return to Pakistan. The applicant does not present evidence demonstrating that he and his family would be specifically targeted upon return to Pakistan. The applicant does not submit affidavits or other documentary evidence in support of the motion. As such, the applicant has failed to meet this key requirement of a motion to reopen.

On motion, the applicant does not adequately address the compelling reasons that prevent his and his family’s return to Pakistan. Merely restating his earlier claims that he cannot return to Pakistan because, “kidnapping, extortion, and explosions by terrorists are everyday routine. Law and Order situation in Pakistan becomes worst and worst; and the people who return from the United States of America and the United Kingdom are targeted, their children are often kidnapped with a lot of money of ransom demand and they are sometimes murdered” is not sufficient credible and probative evidence to establish compelling reasons that prevent his and his family’s return to Pakistan. The applicant does not provide probative evidence demonstrating that he and his family would face the risk of kidnapping upon return to Pakistan because of his duties and responsibilities at the Embassy of Pakistan in Washington, D.C. The applicant does not demonstrate that he and his family are at greater risk of harm because of his past government employment, political activities or other related reason.

The applicant provides no new facts or evidence to establish that he is unable to return to Pakistan because of any action or inaction on the part of the government of Pakistan or other political entity there. As such, the motion does not meet the requirements of 8 C.F.R. § 103.5(a)(2) and must be dismissed.

As for the motion to reconsider, the regulation requires that 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 U.S. Citizenship and Immigration (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. See *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

³ The 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 NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original) .

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the "additional legal argument" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. Also, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60. Furthermore, a motion to reconsider is not a process by which a party may submit documents, which were previously available and the applicant failed to submit them when requested to do so.

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 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. The applicant in essence relied on the same arguments he made on appeal, which were thoroughly discussed by the AAO and dismissed as insufficient evidence. The applicant does not successfully address the issue raised in the AAO's previous decision, that he had not established compelling reasons that prevent his and his family's return to Pakistan as required under Section 13 of the Act. In its May 24, 2013 decision, the AAO fully discussed these issues and on motion, the applicant has not addressed whether the AAO's decision was incorrect as a matter of law, precedent decision or USCIS Service policy. Therefore the motion to reconsider shall be dismissed.

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 also.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion will 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 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.