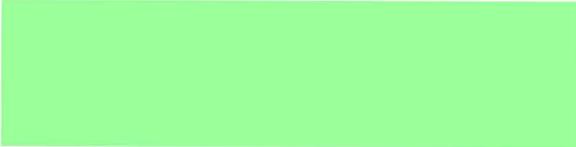




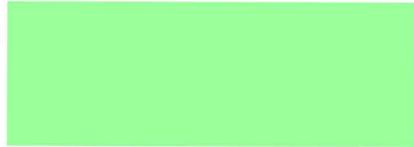
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: Office: NATIONAL BENEFITS CENTER FILE:

JUL 01 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: 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,

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 (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 citizen of El Salvador who is seeking to adjust her 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 spouse of an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

The director denied the Form I-485, Application to Register Permanent Residence or Adjust Status, after determining that the applicant’s spouse had failed to demonstrate that compelling reasons prevent his and his family’s return to El Salvador. The director also 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’s spouse be denied because he has failed to present compelling reasons why he cannot return to El Salvador. The director denied the applicant’s adjustment of status application on the basis of her spouse’s ineligibility for benefits under Section 13. *Decision of the Director*, dated March 12, 2013.

In a separate decision, the AAO upon a *de novo* review of the record dismissed the appeal of the applicant’s spouse on the grounds that he failed to establish compelling reasons that prevent his and his family’s return to El Salvador.¹ As the applicant’s eligibility for adjustment under Section 13 derives from the eligibility of her spouse, and the applicant had not provided new facts or evidence separate from those claimed by her spouse, the AAO determined that the applicant is also ineligible for adjustment of status and dismissed the appeal accordingly.

On motion, the applicant requests the AAO to reopen and reconsider its decision. The applicant does not provide any new facts or evidence to support her claim that there are compelling reasons that prevent her and her spouse from returning to El Salvador, nor does she cite any pertinent precedent decisions demonstrating that the previous decision was based on an incorrect application of law or service policy.

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

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).

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 spouse because he failed to meet all the requirements for a motion to reopen and a motion 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 her spouse, 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.

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.