

(b)(6)



U.S. Citizenship  
and Immigration  
Services

DATE: **JUL 14 2014** Office: NATIONAL BENEFITS CENTER FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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 Pakistan 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)(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 spouse had failed to demonstrate compelling reasons that prevent his and his family’s return to Pakistan. The director also noted that the U.S. Department of State issued its opinion on January 26, 2013 advising that it could not make a favorable recommendation in this case as the applicant’s spouse had not established compelling reasons that prevent his return to Pakistan. The director denied the applicant’s adjustment of status application on the basis of her spouse’s ineligibility for benefits under Section 13. *See Director’s Decision*, dated March 5, 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 Pakistan.<sup>1</sup> 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 reasserts the same reasons as her spouse as the compelling reasons why she and her family cannot return to Pakistan. The applicant relies on the same evidence submitted by her spouse on motion to support her own 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.

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<sup>1</sup> 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).

In a separate decision, the AAO dismissed the motion filed by the applicant's spouse because he failed to address whether the AAO's decision was incorrect as a matter of law, precedent decision or USCIS Service policy and failed to submit sufficient credible and probative evidence to overcome the grounds of the AAO's prior decision on January 6, 2014. 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.

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 previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.