

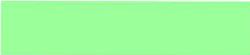


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 14 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,

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 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 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 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 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 January 26, 2013 advising that it could not make a favorable recommendation in this case as the applicant had not established compelling reasons that prevent his return to Pakistan. *See Director’s Decision*, dated March 5, 2013.

The director also denied the application of the applicant’s spouse [REDACTED] who submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) seeking to adjust her status under Section 13 as a derivative dependent spouse of the applicant. The director issued a separate decision denying the application. The applicant’s spouse has filed a Form I-290B, Notice of Appeal or Motion, requesting the AAO to reopen and reconsider its decision.

On January 6, 2014, the AAO upon a *de novo* review of the evidence of record, determined that the applicant failed to meet his burden of establishing his eligibility for adjustment of status under Section 13 of the Act.<sup>1</sup> Specifically, the AAO determined that the applicant failed to establish that there are compelling reasons that prevent his and his family’s return to Pakistan. The AAO dismissed the appeal accordingly. On the same date, the AAO dismissed the appeal of the applicant’s dependent spouse, because, as a derivative dependent of the applicant, she failed to provide evidence of compelling reasons that prevent her return to Pakistan separate from that presented by the applicant.

On February 3, 2014, the applicant submits a Form I-290B, Notice of Appeal or Motion, requesting the AAO to reopen and reconsider its decision. The applicant submits a brief, statements from two officials of the [REDACTED] in Pakistan, a statement from the applicant’s father, and a copy of “First Investigation Report” dated February 15, 1981, from [REDACTED], Pakistan, to support 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:

---

<sup>1</sup> 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.

The motion to reopen will be granted. The AAO will reopen this proceeding to consider the new evidence the applicant presents.

On motion to reopen, the applicant submits two statements dated January 15, 2014, from individuals who claimed to be officials of the [REDACTED] in Pakistan. They claim that the applicant has been an active member and supporter of [REDACTED] since the 1980s in [REDACTED] Pakistan and that on February 16, 1981, the applicant was arrested during a “massive agitation against [REDACTED] . . . was awarded one year rigorous imprisonment . . . in March 1981.” *See Statement from [REDACTED]* One of the [REDACTED] officials claims that the applicant “faces threats from the militant groups presently operating in every corner of Pakistan.” *See Statement from [REDACTED]* The applicant’s father states that the applicant has been an active member of [REDACTED] from the 1980s to present and that there are some “serious threats to the life of the [applicant] and his family from the militant groups in Pakistan.” The applicant’s father claims that in 2010, he received threatening phone calls from unknown individuals in Pakistan stating that the applicant will have a “terrible welcome” if he returns to Pakistan. The applicant’s father also claims that the militant groups “gave a clear threat to kill [the applicant] being a [REDACTED] activist and American friend” when he returns to Pakistan. The record on motion also contains a “First Investigation Report” dated February 15, 1981, indicating that the applicant was arrested and jailed by the Rawalpindi police in February 1981 under Martial Law regulation #13-331 for participating in a student protest against the government.

Although the applicant submits documents on motion indicating that he was a member of the [REDACTED] during the 1980s and that he was arrested for political activities during that period, the record does not establish that the applicant will be at greater risk of harm if he returns to Pakistan because of his activities and duties as a former diplomat for the Government of Pakistan in the United States. The evidence submitted does not adequately address the issue raised in the AAO’s previous decision, that the applicant had not established compelling reasons that prevent his and his family’s return to Pakistan. In its January 6, 2014 decision, the AAO fully discussed the reasons why it found the evidence of record at the time insufficient to establish compelling reasons why the applicant cannot return to Pakistan and why the applicant is ineligible for adjustment of status under Section 13 of the Act. The applicant has failed to submit sufficient credible and probative evidence to overcome the grounds of the AAO’s prior decision on January 6, 2014. Therefore, the motion will be dismissed.

The regulation at 8 C.F.R. § 103.5(a)(3) stipulates 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. 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).

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 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 not addressed whether the AAO’s decision was incorrect as a matter of law, precedent decision or USCIS Service policy. Therefore, the motion will 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 to reopen and motion to reconsider will be dismissed. The previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.