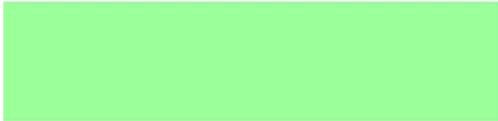


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U.S. Citizenship
and Immigration
Services



DATE:

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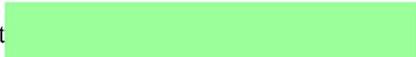
Office: NATIONAL BENEFITS CENTER

FILE:



IN RE:

Applicant



APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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 Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, National Benefits Center. A subsequent appeal and a motion to reopen were 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 motions will be dismissed, the previous decisions affirmed and the application remains denied.

The applicant is a native and citizen of Mexico who is seeking to adjust his status to that of lawful permanent resident under section 13 of the Immigration and Nationality Act of 1957, 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)(A)(ii) of the Immigration and Nationality Act (the 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 Mexico. *Decision of Director* dated January 15, 2013. The AAO dismissed the appeal, concurring with the director that the applicant had failed to establish that compelling reasons prevent his return to Mexico. *Decision of the AAO*, dated May 9, 2013. The AAO affirmed its decision, as the issue on which the underlying decision was based had not been overcome on motion. *Decision of the AAO*, dated October 11, 2013.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that a motion to reopen or reconsider a proceeding must be filed within 30 days of the underlying decision, and that a motion to reopen must be filed within 30 days except that failure to file a motion during this period may be excused when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant.

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.8(b).

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

The applicant indicates at Part 3 of the current Form I-290B, Notice of Appeal or Motion, that he is filing a motion to reopen and motion to reconsider from a decision dated "01/22/14." The record, however, does not indicate that a decision had been issued on that date. The record does contain a notice dated January 22, 2014, which indicates, in part, "THIS IS AN INFORMATIONAL NOTICE ONLY."¹ As there are no provisions in the regulations that provide for a motion to reopen or motion to reconsider the notice of January 22, 2014, the motions will be dismissed.

¹ The notice advised the applicant that the previously submitted Form I-290B had been rejected as improperly filed as USCIS did not receive payment within 14 days of the invoice date. 8 CFR 103.2(a)(7)(ii)

Assuming, arguendo, the applicant was filing a motion from the decision of October 11, 2013, it would be dismissed as untimely filed, as the Form I-290B was received 135 days after the date of the AAO's decision.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met and accordingly, the motions will be dismissed and the previous decisions of the AAO will not be disturbed.

ORDER: The motions are dismissed. The previous decisions of the AAO are affirmed.