U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: NOV 0 4 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:

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,

for 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. The motion will be granted. The previous decision of the AAO will be affirmed. The application will remain denied.

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)(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 not established that he performed diplomatic or semi-diplomatic duties.[1] *Decision of National Benefits Director,* dated March 25, 2014.

On August 11, 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.[2] Specifically, the AAO determined that the applicant failed to establish that he performed duties for the government of Pakistan that are diplomatic or semi-diplomatic in nature. The AAO dismissed the appeal accordingly.

On September 2, 2014, the applicant files a Form I-290B, Notice of Appeal or Motion, requesting the AAO to reopen its decision. The applicant submits a statement dated August 20, 2014 signed by Dr. Ambassador, and a brief from counsel in support of the motion.[3]

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.

On motion, counsel asserts that the applicant was employed as an Assistant Consular Officer at the that the applicant represented the Consulate in important and sensitive trade matters before the Federal, State, and Local levels of government, that the applicant negotiated trade and commercial agreements with top state and local officials representing Pakistan, that the applicant was the "second man" at the consulate and that he was delegated with the diplomatic and administrative tasks of the General Consul in the Consul General's absence. As such, counsel contends that the applicant's duties were "not merely of a

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[1] The director also noted that the Department of State issued its opinion on December 31, 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.

[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).

[3] Dr. was the Illinois from July 2007 to August 2010.

clerical, custodial or administrative nature, but were in fact diplomatic." Counsel refers the statement from Dr. whom counsel claims "worked closely with the applicant in during the applicant's employment at the consulate. The AAO will accept the statement from Dr. as new evidence and will reopen the matter.

We find that the evidence on motion is insufficient to overcome the grounds for our previous decision to dismiss the appeal. While counsel claims that the applicant represented his country in trade and commercial agreements with top state and local officials, the evidence of record does not support such assertions. In fact, counsel's assertions on motion are inconsistent with the applicant's prior statements and description of his duties at the Consulate. In his Sworn Statement on February 1, 2012, the applicant described his duties at the consulate as "consular work; serving the Pakistani public." The applicant did not indicate that he had "negotiated trade and commercial agreements with top state and local officials" on behalf of Pakistan nor did he indicate that he was delegated to assume the diplomatic duties of the Consul General in his absence. In addition, counsel's description of the applicant's duties on motion is inconsistent with his designation as an "Administrative Assistant."[4] It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although counsel equates the applicant's duties as diplomatic or semi-diplomatic duties, the applicant does not provide detailed information indicating his actual role and duties as an Administrative Assistant/Consular Assistant at the consulate and whether these duties involved clerical and administrative duties or duties that are diplomatic or semi-diplomatic duties.[5]

Counsel also claims that the statement from Dr. "attests to the applicant's duties as diplomatic duties." Contrary to counsel's claim, the statement submitted on motion, which contains the same wordings as a statement previously submitted by the applicant on appeal, did not provide a detailed description of the applicant's duties at the consulate demonstrating that the applicant's duties were diplomatic or semi-diplomatic in nature. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant does not adequately address the issue raised in our previous decision, that he had not established his duties at the Illinois were diplomatic or semi-diplomatic in nature. The record does not show that the applicant had any formal advisory or decision-making role at the Illinois, or that he

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[4] See Notification of Termination from U.S. Department of State, Office of Foreign Missions; See also, a copy of U.S. visa issued to the applicant on February 28, 2008.

[5] See Statement from Dr. Consul General, Illinois, dated May 14, 2009.

represented Pakistan before the United States government or any foreign government in any official capacity. In the August 11, 2014 decision, we fully discussed the reasons why we found the applicant ineligible for adjustment of status under Section 13 of the Act. On motion, the applicant has failed to overcome the basis of our previous decision; therefore we affirm our August 11, 2014 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 granted, the proceedings will be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is granted. The previous decision of the director and the AAO will be affirmed. The application will remain denied.