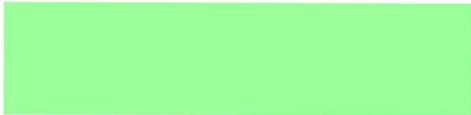




U.S. Citizenship
and Immigration
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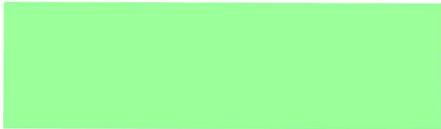


DATE: Office: NATIONAL BENEFITS CENTER FILE: 
NOV 19 2014

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:

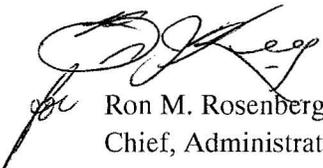


INSTRUCTIONS:

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,



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

The applicant is a citizen of Afghanistan, 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 Afghanistan. The director also noted that on February 22, 2013, the U.S. Department of State issued its opinion recommending that the adjustment of status application of the applicant be denied because the applicant presented no compelling reasons why he cannot return to Afghanistan. *See Decision of the Director*, dated March 12, 2013.

The director also denied the application of the applicant’s spouse [REDACTED], his daughter [REDACTED] and his son [REDACTED] who each submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) under Section 13 of the Act as derivative dependents of the applicant. The director issued separate decisions denying these applications. The dependents each filed a separate Form I-290B, Notice of Appeal or Motion.

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.¹ Specifically, we determined that while the applicant had established compelling reasons that prevent his and his family’s return to Afghanistan, he failed to establish that his adjustment of status will serve U.S. national interest – a key requirement for adjustment of status under Section 13 of the Act. The AAO dismissed the appeal accordingly. On the same date, the AAO dismissed the appeal of the dependents based on the applicant’s ineligibility for adjustment of status under Section 13.

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 and a 2013 Freedom in the Work Report on Afghanistan in support of 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.

¹ 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).

On motion, the applicant provides no new facts supported by affidavits or other documentary evidence as required for a motion to reopen. 8 C.F.R. § 103.5(a)(2). Based on the plain meaning of “new,” a new fact is found to be evidence that was newly submitted, previously unavailable, and could not have been discovered or presented in the previous proceeding.² In this matter, the applicant has presented no new facts to be reopened; rather, he reasserts essentially the same facts previously submitted in support of his application and on appeal, which the AAO considered in reaching its January 6, 2014 decision.

On motion, counsel does not submit any new facts or evidence to address the second prong of section 13(b) of the 1957 Act, which requires the adjustment of the alien to serve the U.S. national interest. Counsel claims that keeping the family together in the United States and protecting the applicant’s right to freedom of speech guaranteed under Article 19 of the Universal Declaration of Human Rights, to which United States is a signatory is in the national interest of the United States.

We note that neither the statute nor Service regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” However, in this case, the applicant has provided no new facts or evidence to persuasively demonstrate that his adjustment of status will be in the national interest of the United States. The applicant does not adequately address the issue raised in our previous decision, that in addition to demonstrating compelling reason why he cannot return to Afghanistan, he must demonstrate that his adjustment of status is in the national interest of the United States. 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 January 6, 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 denied. The previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is denied. The previous decisions of the director and the AAO are affirmed.

² The word “new” is defined as “1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>” WEBSTER’S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original) .