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

The applicant is a native and citizen of Afghanistan who is seeking to adjust his 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 child 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 father had failed to demonstrate that compelling reasons prevent his and his family's 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's father be denied because the applicant's father presented no compelling reasons why he and his family cannot return to Afghanistan. The director denied the applicant's adjustment of status application on the basis of his father's ineligibility for benefits under Section 13. *See Decision of the Director,* dated March 12, 2013.

In a separate decision, the AAO upon a *de novo* review of the record found that the applicant's father had established compelling reasons that prevent his and his family's return to Afghanistan. We dismissed the appeal of the applicant's father because he failed to establish that his adjustment of status is in the national interest of the United States.[1] As the applicant's eligibility for adjustment under Section 13 derives from the eligibility of his father, and the applicant had not provided new facts or evidence separate from those claimed by his father, we determined that the applicant is also ineligible for adjustment of status and dismissed the appeal accordingly.

On motion, the applicant provided no new facts to be reopened and provided no evidence to establish that his adjustment will serve U.S. national interest. The applicant in essence relied on the same facts and evidence provided by his father on motion in support of his own motion to reopen.

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.

In a separate decision, the AAO dismissed the motion filed by the applicant's father because he failed to meet all the requirements for a motion to reopen. 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 his father, and the applicant has provided no new facts or pertinent precedent decisions demonstrating that the AAO's prior decision

[1] 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).

was incorrect as a matter of law or Service policy other than that which his father had presented, the AAO will deny the applicant's motion to reopen 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 denied, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

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