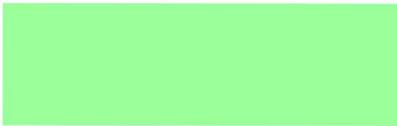


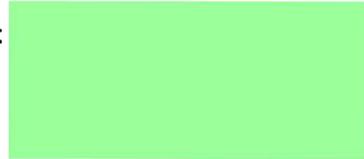


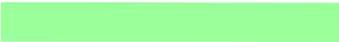
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: Office: NATIONAL BENEFITS CENTER FILE:
OCT 06 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 and two motions to reopen and/or reconsider were dismissed by the Administrative Appeals Office (AAO). The matter is now before us on a third motion to reopen and a motion to reconsider our previous decisions. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(C), 103.5(a)(3), and 103.5(a)(4). The previous decisions of the AAO will be affirmed and the application remains denied.

The applicant is a native and citizen of Pakistan 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 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)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

The director denied the application for adjustment of status after determining that the applicant had failed to demonstrate compelling reasons that prevent his return to Pakistan. The director also noted that the U.S. Department of State issued its opinion on April 19, 2012 recommending that the applicant’s request for adjustment of status in the United States be denied because the applicant presented no compelling reasons to demonstrate that he cannot return to Pakistan. On appeal, the applicant claimed that he had established compelling reasons that prevent his and his family’s return to Pakistan. After a *de novo* review of the evidence of record, we concurred with the director’s determination and dismissed the appeal.¹

On October 17, 2013, we dismissed the applicant’s motion to reopen and reconsider. In dismissing the motion, we noted that the record on motion did not include any new facts and that the affidavit the applicant submitted did not satisfy either the requirements of a motion to reopen or a motion to reconsider. On December 27, 2013, the applicant filed a second motion to reconsider our decision. On June 18, 2014, we dismissed that motion to reconsider as it was untimely filed. The applicant’s third motion to reopen and to reconsider was received on August 4, 2014, forty-eight (48) days after the date of our decision. On August 8, 2014, the Phoenix Lock Box rejected the motion because it was filed without the appropriate fees.² The applicant resubmitted the motion with the appropriate fees on August 26, 2014.

United States Citizenship and Immigration Services (USCIS) regulations require that motions to reconsider be filed within 30 days of the underlying decision. 8 C.F.R. § 103.5(a)(1)(i). Similarly, USCIS regulations require that motions to reopen be filed within 30 days of the underlying decision, except that failure to timely file a motion to reopen may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the affected party's control. *Id.* In this matter, the instant motion was initially filed at the Phoenix Lock Box on August 4, 2014, forty-eight (48) days after our June 18, 2014 decision. The motion was rejected as improperly filed because the applicant failed to submit the appropriate fees with the Form I-290B. The applicant subsequently filed the motion and the appropriate fees on August 26, 2014, seventy (70) days after our decision and twenty-two (22) days after the motion

¹ The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

² A benefit request which is rejected because of incorrect fees will not retain a filing date. See 8 C.F.R. §§ 103.2(a)(7)(iii).

was rejected as improperly filed. The record indicates that our decision was mailed to both the applicant and his attorney at their addresses of record. The record does not contain evidence to demonstrate that the applicant's failure to file the motion within 30 days of our decision was reasonable and beyond his control. Accordingly, the instant motion to reopen and to reconsider is untimely and must be dismissed for that reason.³

In addition, 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. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent authority to establish that the earlier decision was based on an incorrect application of law or Service policy and also establish that the decision was incorrect based on the evidence of record at the time it was rendered. 8 C.F.R. § 103.5(a)(3). In this case, the applicant has failed to meet the requirements for a motion to reopen and a motion to reconsider. Pursuant to the regulations, a motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). For this reason as well, the motion to reopen and to reconsider shall be dismissed.

ORDER: The motion is dismissed. The previous decisions of the AAO are affirmed. The application remains denied.

³ As noted above, motions to reopen, in contrast to motions to reconsider, may be accepted in the Service's sole discretion even if filed untimely if the reason for the delay is reasonable and was beyond the control of the movant. 8 C.F.R. § 103.5(a)(1)(i). In this case, the applicant has not alleged, much less shown, that there was a reason beyond his control for the untimely filing.