U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-S-

DATE: NOV. 2, 2015

MOTION OF ADMINSTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS

The Applicant, a native and citizen of Pakistan, seeks to adjust status to Lawful Permanent Resident as a derivative dependent of the principal applicant. *See* Section 13 of the Act of September 11, 1957, Pub. L. No. 85-316, 71 Stat. 642, *amended by* Pub. L. No. 97-116, 95 Stat. 161 (1981), 18 U.S.C. § 1255b. The Director, National Benefit Center, denied the application after determining that the Applicant's spouse had failed to demonstrate that compelling reasons prevent his return to Pakistan. We dismissed a subsequent appeal and a motion to reopen and reconsider. The matter is now before us on a second motion to reopen and reconsider. The motion will be denied.

The Director denied the application for adjustment of status of the Applicant's spouse after determining that he had failed to establish compelling reasons that prevent his return to the Pakistan. *Decision of the Director,* dated March 5, 2013. The Director denied the Applicant's adjustment application on the basis of her spouse's ineligibility for benefits under Section 13. In a separate decision, we dismissed the appeal of the Applicant's spouse on the grounds that he failed to establish that compelling reasons prevent his return to Pakistan as required under Section 13. As the Applicant's eligibility for adjustment of status under Section 13 is derived from the eligibility of her spouse, and the Applicant did not claim compelling reasons separate from those claimed by her spouse, we also determined that the Applicant is ineligible for adjustment of status and dismissed the appeal accordingly.

On July 14, 2014, we denied the Applicant's motion to reopen and motion the reconsider because the evidence submitted was insufficient to overcome the grounds of our earlier decision. On August 14, 2014, the Applicant filed the current 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.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an

> incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

On current motion to reopen and reconsider the Applicant relies on the same evidence of statements from her spouse's father, a "First Investigative Report" from , and statements from officials of the in Pakistan indicating that the Applicant's spouse and his family would be harmed by militant groups operating in Pakistan because of his affiliation to , which the Applicant's spouse proffered in support of his own motion to reopen and reconsider.

In a separate decision, we denied the Applicant spouse's motion to reopen and motion to consider. We found that the Applicant's spouse had failed to establish that he was at risk of harm due to political change or upheaval that occurred while he was in the United States in diplomatic status, as required under Section 13 of the Act. We also found that the Applicant spouse's desire to remain in the United States for family unity and for the continued education and general well-being of his children are not compelling reasons within the meaning of Section 13. For these reasons we found that the principle Applicant was not eligible for adjustment of status as he had failed to establish that there are compelling reasons within the meaning of Section 13 that prevent him from returning to Pakistan.

As the Applicant's eligibility for adjustment under Section 13 derives from the eligibility of her spouse, and the Applicant has provided no new facts or evidence separate from those submitted by her spouse, we will deny the Applicant's motion to reopen and motion to reconsider accordingly.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of F-S-*, ID# 10558 (AAO Nov. 2, 2015)