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**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-S-Q-

DATE: FEB. 29, 2016

MOTION ON ADMINISTRATIVE 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. *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 (Section 13 of the Act). The Director, National Benefits Center, denied the application. We dismissed an appeal of the Director's decision, and we denied two subsequent motions to reopen. The matter is now before us on a motion to reconsider. The motion will be denied.

The Director denied the Form I-485, Application to Register Permanent Residence or Adjust Status, on January 10, 2013, finding that the Applicant did not establish compelling reasons that made him unable to return to Pakistan as required under Section 13 of the Act. The Applicant filed a Form I-290B, Notice of Appeal or Motion, and the Director denied the motion. The Director approved a subsequent motion to reopen the Applicant's Form I-485 and issued a new decision denying the Applicant's Form I-485 on March 25, 2014, finding that the Applicant did not establish that he performed semi-diplomatic or diplomatic duties as required under Section 13 of the Act. The Applicant appealed that decision, and we dismissed the appeal, finding that the evidence did not establish that the Applicant performed diplomatic or semi-diplomatic duties. The Applicant filed a motion to reopen that decision, providing an additional letter concerning the Applicant's duties while he was in A-2 status, which we denied because the evidence did not support the assertions made on motion. The Applicant filed another motion to reopen, providing additional letters and an affidavit concerning his duties while he was in A-2 status. In our decision dated July 22, 2015, we denied that motion on the same basis as the previous motion, that the Applicant's assertions were not supported by the evidence.

On motion to reconsider, the Applicant states that he has established that his duties as a [REDACTED] were, "at the very least," semi-diplomatic and that we did not give "due consideration" to the affidavit he submitted with his previous motion. He states that he was involved in [REDACTED] and that he [REDACTED]

[REDACTED] In support of the motion, the Applicant submits a copy of an Administrative Appeals Office (AAO) non-precedent decision concerning Section 13 of

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the Act;¹ a copy of *Matter of Vargas*, 14 I&N Dec. 354 (Reg. Comm. 1973); and a document showing that he was [REDACTED] for the Consulate of Pakistan in [REDACTED]. Because the Applicant submits new evidence, we will also treat his motion as a motion to reopen.

A motion to reopen must state the new facts to be proved 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 precedent decisions to establish that the decision was based on an incorrect application of law or 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The Applicant states that he was performing, “at the very least,” semi-diplomatic duties at the Pakistani Consulate while he served as [REDACTED] at the Pakistani Consulate in [REDACTED] from June 19, 2004 to May 27, 2009. Whether an individual’s duties qualify under the Act as diplomatic or semi-diplomatic requires a fact-specific, case-by-case analysis. The Applicant cites *Matter of Vargas*, which holds that the provisions of Section 13 of the Act should be broadly construed to carry out the intent of Congress. As stated in our prior decisions, the intent of Congress was for Section 13 to benefit those who performed diplomatic or semi-diplomatic duties. 14 I&N Dec. at 355. The terms diplomatic and semi-diplomatic are not defined in the statute or regulations; the standard definitions of terms such as diplomat, diplomatic, and diplomacy are varied and broad; and, in practice, diplomacy may encompass many responsibilities and duties. As such, we must rely on a detailed description of the duties and documentary evidence, to the extent that it is available, to enable a thorough review and accurate a conclusion regarding the nature of the described duties and whether the duties are diplomatic or semi-diplomatic duties.

The Applicant’s assertions on motion that he held a “formal advisory and decision making role,” engaged in matters dealing with [REDACTED] and pursued the interests of his country “in negotiations and agreements, especially in [REDACTED]” is not supported by the evidence of record, as set forth in our prior decision. The Applicant stated in his affidavit dated December 3, 2014, that he “represent[ed] the Consulate on [REDACTED]” but the letters of support in the record simply state that the Applicant was involved in [REDACTED], and that he “performed many useful political, commercial and diplomatic tasks,” without providing details as to what tasks were considered to be political, commercial, or diplomatic. Although the Applicant’s assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be

¹ The AAO decision is unpublished and not designated as a precedent decision. Only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on U.S. Citizenship and Immigration Services officers. The findings made in the other AAO decisions, therefore, have no binding precedential value for purposes of the Applicant’s case.

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hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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 record does not support the Applicant’s assertions that his duties were diplomatic or semi-diplomatic in nature. The Applicant has not established that our prior decision was based on an incorrect application of law or policy.

The only new documentation that the Applicant submits on motion is a “Circular” dated July 23, 2007, stating (note: errors in the original text have not been changed) “[t]he following officer and official of Consulate General Pakistan [REDACTED] are hereby [REDACTED]

[REDACTED] The document lists the name of the Consul/Head of Mission and also the name of the Applicant, as a [REDACTED]. The document submitted establishes that the Applicant was [REDACTED] such as [REDACTED].

As stated in our prior decisions, the essential role of a diplomat is the representation of a country in its relations with other countries, and [REDACTED] are not diplomatic functions. The documentation submitted on motion does not establish new facts or establish that our prior decisions were made on an incorrect application of law or policy. We affirm our prior decision finding that the record does not establish that the Applicant’s duties were diplomatic or semi-diplomatic in nature.

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. Accordingly, the motion will be denied.

ORDER: The motion to reconsider is denied.

Cite as *Matter of M-S-Q-*, ID# 15581 (AAO Feb. 29, 2016)