



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

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

MATTER OF S-A-

DATE: JAN. 19, 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. The Director, National Benefit Center, denied the application, and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen and reconsider. The motion will be denied.

The Director denied the Applicant's adjustment of status application on the basis of her spouse's ineligibility for benefits under Section 13. *Decision of the Director*, dated May 30, 2014. We dismissed the appeal of the Applicant's spouse, finding that he had not established compelling reasons that prevented 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 had not claimed compelling reasons separate from those claimed by her spouse, we dismissed the Applicant's appeal. The Applicant has timely filed a motion to reopen and reconsider requesting that we reconsider our previous decision dismissing her appeal.

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 motion, the Applicant submits the same documents submitted by her spouse in support of his motion to reopen and reconsider.

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In a separate decision, we denied the Applicant's spouse's motion to reopen and reconsider. We found that the Applicant's spouse had not established that he is unable to return to Pakistan due to political change that renders him, as a returning diplomat, "homeless" or "stateless" or that he is a risk of harm following political upheaval in the country that accredited him as required under Section 13 of the Act. For these reasons we found that the principle Applicant was not eligible for adjustment of status under Section 13 of the Act. As the Applicant's eligibility for adjustment of status under Section 13 of the Act 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.

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 S-A-*, ID# 13567 (AAO Jan. 19, 2016)