



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

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

In Re: 9643216

Date: AUG. 3, 2020

Motion on Administrative Appeals Office Decision

Form I-485, Application to Adjust Status

The Applicant is a citizen of Pakistan who seeks to adjust status to that of a lawful permanent resident under section 13 of the 1957 Immigration Act (Section 13). 8 U.S.C. § 1255b. Section 13 allows a foreign national who was previously an A-1, A-2, G-1, or G-2 nonimmigrant to adjust status if certain criteria are met.¹ The Applicant bases her claim to adjustment of status under Section 13 upon that of the principal applicant's eligibility.

The Director of the National Benefits Center denied the application, concluding that the Applicant was not eligible to adjust status under Section 13 because the principal applicant (her spouse) was also ineligible for the requested benefit. We summarily dismissed a subsequent appeal pursuant to the regulations at 8 C.F.R. §103.3(a)(1)(v), because the Applicant did not identify any erroneous conclusion of law or statement of fact in the Director's decision.

The matter is now before us on a combined motion to reopen and reconsider. The Applicant asserts that a final decision concerning the principal's eligibility has not yet been made, and requests reopening of these proceedings so that her adjustment application may be considered together with the principal's application.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reopen and reconsider.

In general, the official who made the latest decision in the proceeding may, for proper cause shown, reopen the proceeding or reconsider the prior decision. 8 C.F.R. § 103.5(a)(i)-(ii). A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider must show that our decision was based on an incorrect application of law or policy to the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(2)-(3). We may grant a motion that satisfies these

¹ Pub. L. No. 85-316, 71 Stat. 642, *amended by* Pub. L. No. 97-116, 95 Stat. 161 (1981). The A nonimmigrant classification is for diplomats and foreign government officials (principal) as well as their immediate family members. The G nonimmigrant classification is for employees of certain international organizations (principal) and their immediate family members. *See* <https://travel.state.gov>.

requirements and demonstrates eligibility for the requested immigration benefit; however, a motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

A review of any motion, however, is limited to the basis for the prior adverse decision. Thus, we examine any new facts and arguments to the extent that they pertain to our summary dismissal of the Applicant's appeal.

The Applicant does not claim on the instant motion that the summary dismissal of her appeal was based on incorrect application of law or U.S. Citizenship and Immigration Services' (USCIS) policy. Rather, she states that she is seeking adjustment of status as a dependent of the principal applicant, whose request for adjustment has not yet been adjudicated. This statement, however, does not pertain to the basis for the summary dismissal of the Applicant's appeal, which is the latest decision in her adjustment of status proceedings. As such, it does not establish a basis for reopening of that decision.

Furthermore, the record reflects that the Director denied the principal's adjustment application and a subsequent motion to reopen and reconsider. The record does not show, and the Applicant does not claim, that the principal appealed the adverse decision to our office, as instructed by the Director. The denial of the principal's adjustment application therefore became final upon the expiration of the 33-day appeal period.² As stated, the Applicant's eligibility for adjustment of status under Section 13 depends on that of the principal applicant's eligibility. Because the principal was determined to be ineligible to adjust status under Section 13, the Applicant also does not qualify for adjustment of status on that basis. Thus, no purpose would be served by reopening of her Form I-485 at this time.

The Applicant does not claim that we erred as a matter of law or USCIS policy in summarily dismissing her appeal, nor has she established any new facts relevant to the summary dismissal that would warrant reopening of these proceedings. Consequently, we have no basis for reopening or reconsideration of our appellate decision. The Applicant's appeal therefore remains dismissed, and her underlying application for adjustment of status under Section 13 remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

² See 8 C.F.R. §§ 103.3(a)(2)(i) and 103.8(b).