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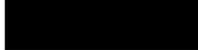
U.S. Citizenship
and Immigration
Services

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FILE:



Office: WASHINGTON DISTRICT

Date:

SEP 21 2007

IN RE:

Applicant:



PETITION:

Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Washington, D.C. denied the Form I-485, Application to Register Permanent Residence or Adjust Status, and the matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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 Immigration and Nationality Act (the Act) of 1957, Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Act.

The district director determined that the applicant had failed to establish that compelling reasons prevented his return to Pakistan or that his adjustment would serve U.S. interests. He denied the application accordingly. *District Director's Decision*, dated March 27, 2001.

On appeal, the applicant contends that he would be persecuted if he returned to Pakistan because of his moderate Islamic beliefs and for having identified high-ranking corrupt officials in Pakistan's diplomatic service. He further asserts that he has only one functioning kidney and that it will be impossible for him and his children to afford this treatment in Pakistan. The applicant notes that the climate and food in Pakistan will also have a negative effect on his health. *Applicant's Statement*, dated April 3, 2001.

Section 13 of the Act of September 11, 1957, as amended on December 29, 1981, by Pub. L. 97-116, 95 Stat. 1161, provides, in pertinent part:

(a) Any alien admitted to the United States as a nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Act, who has failed to maintain a status under any of those provisions, may apply to the Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.

(b) If, after consultation with the Secretary of State, it shall appear to the satisfaction of the Attorney General that the alien has shown compelling reasons demonstrating both that the alien is unable to return to the country represented by the government which accredited the alien or the member of the alien's immediate family and that adjustment of the alien's status to that of an alien lawfully admitted for permanent residence would be in the national interest, that the alien is a person of good moral character, that he is admissible for permanent residence under the Immigration and Nationality Act, and that such action would not be contrary to the national welfare, safety, or security, the Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

Pursuant to 8 C.F.R. § 245.3, eligibility for adjustment of status under section 13 of the 1957 Act is limited to aliens who were admitted into the United States under section 101, paragraphs (a)(15)(A)(i), (a)(15)(A)(ii), (a)(15)(G)(i), or (a)(15)(G)(ii) of the Act who performed diplomatic or semi-diplomatic duties and to their immediate families, and who establish that there are compelling reasons why the applicant or the member of the applicant's immediate family is unable to return to the country represented by the government which accredited

the applicant, and that adjustment of the applicant's status to that of an alien lawfully admitted to permanent residence would be in the national interest. Aliens whose duties were of a custodial, clerical, or menial nature, and members of their immediate families, are not eligible for benefits under section 13.

The AAO now turns to a review of the record. In making a determination of statutory eligibility, Citizenship and Immigration Services (CIS) is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The record establishes the applicant's eligibility for consideration under section 13 of the 1957 Act. The applicant was admitted to the United States on July 24, 1996 pursuant to section 101(a)(15)(A)(i), 8 U.S.C. § 1101(a)(15)(A)(i). On March 15, 2001, the Department of State certified that the applicant served as a consular officer in the Consulate General of Pakistan in New York until November 11, 1998, reporting that his next posting was to be the Ministry of Foreign Affairs in Islamabad. Therefore, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(i) of the Act and no longer had that status at the time of his application for adjustment on January 20, 1999.

As a result, the only issues before the AAO are whether the record also establishes that the applicant, at the time of the district director's decision, had compelling reasons that precluded his return to Pakistan and that his adjustment would have served the U.S. national interest, the requirements of section 13(b) of the 1957 Act.

On appeal, the applicant states that the consul general did not appreciate his beliefs or his honesty and prepared bogus reports against him and forwarded them to Islamabad. In the meantime, the applicant asserts, the civilian government was overthrown and the new military regime recalled 18 officers, including the applicant, to Pakistan. The applicant reports that he was relieved of his duties on November 9, 1999, two months before he was to retire, but did not return to Pakistan on the advice of close friends. The applicant states that friends in Pakistan have informed him that all the officers who returned to Pakistan when they were summoned are being persecuted by the military government for one reason or another. Although he has been retired for more than two years, the applicant asserts that he has not received his pension. He states that a return to Pakistan to investigate the problems with his pension would result in his persecution.

While the AAO notes the applicant's statements on appeal regarding his fear of persecution if returned to Pakistan, it finds these statements to conflict with other evidence in the record, including information previously provided by the applicant. On appeal, the applicant states that he was terminated from his diplomatic position on November 9, 1999, following the military overthrow of Pakistan's civilian government. However, the previously discussed certification from the Department of State indicates that the applicant's diplomatic status was terminated a year earlier, on November 11, 1998. The AAO also notes that at his adjustment interview, the applicant indicated that he had left the New York consulate on November 9, 1998. Moreover, as the record establishes that the applicant's adjustment interview took place on June 25, 1999, the termination of his diplomatic status could not have occurred in November 1999, five months later, as he now claims on appeal. Accordingly, the record contradicts the applicant's claim that his diplomatic status was terminated following the October 1999 military overthrow of Pakistan's civilian government and that he was summoned to Pakistan by the new military regime.

The AAO also finds that the transcript of the applicant's adjustment interview, a copy of which is included in the record, disputes his claim that he was fearful of returning to Pakistan following the termination of his diplomatic status. On June 25, 1999, when asked whether he believed he would be persecuted if he returned to Pakistan, the applicant answered in the negative. Instead, he stated that his children were not used to living in Pakistan, that they had lived with him abroad and were now studying in the United States, "compelling" him to stay with them. At his adjustment interview, the applicant also responded to a question as to whether he would be willing to resume his employment with the Government of Pakistan. In this instance, the applicant responded that he would be unwilling to do so because he had "retired from service." The record indicates that at his adjustment interview, in the presence of his prior counsel, the applicant was provided with several opportunities to state any fears he had regarding a return to Pakistan. The applicant did not do so. Therefore, the fear of persecution the applicant claims on appeal is rebutted by his own prior testimony and does not establish a compelling reason that would prevent his return to Pakistan.

The applicant contends that country conditions in Pakistan offer another reason that he should be allowed to adjust his status to that of lawful permanent resident. He points to the millions of Afghan citizens who have moved to Pakistan since the Soviet occupation of their country, resulting in the decline of economic conditions, and law and order. He states that uneducated religious leaders and an undemocratic military regime are running the country and that sectarian violence results in death on a daily basis, with ten people killed in his former village the previous month. Although the AAO acknowledges the applicant's concerns about generalized violence, he has failed to provide any evidence that would establish him as a potential target of such violence, either from the Pakistani government or vying religious sects.

On appeal, the applicant also contends that he has significant health concerns, and that he would face financial and medical problems if he returned to Pakistan. However, the applicant's assertions are not supported by documentation establishing his medical condition or the costs of treatment. Going on record without supporting documentary evidence will not meet the burden of proof in this proceeding. *See 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)). Therefore, the applicant has also failed to establish that there are compelling medical reasons that preclude his return to Pakistan.

With regard to the second prong of section 13(b) of the 1957 Act, the adjustment of the alien would serve the national interest, the applicant at the time of his June 25, 1999 interview contended that his adjustment to lawful permanent resident status would serve the U.S. national interest because he and his children would work, earn money and pay taxes. On appeal, he states that he and his family are contributing to the U.S. economy and culture. He points to his children's upbringing in Europe and the United States, their U.S. baccalaureate degrees, and their careers in New York. The AAO finds that, though laudable, the accomplishments of the applicant's children do not, individually or cumulatively, constitute the type of benefit to U.S. interests envisaged by section 13(b) of the 1957 Act. As there is no other evidence in the record that addresses the benefits that would result from the applicant's adjustment, the AAO finds that the applicant has also failed to establish that his adjustment would serve the U.S. national interest.

For the reasons already discussed, the record does not establish that, at the time of the director's adjudication of the application, compelling reasons prevented the applicant's return to Pakistan. It also fails to offer sufficient evidence to demonstrate that the applicant's adjustment would benefit the U.S. national interest.

Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. The applicant has failed to meet this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal will be dismissed.