



U.S. Citizenship
and Immigration
Services

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FILE:

Office: WASHINGTON DISTRICT Date:

APR 11 2008

IN RE:

Applicant:

APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision 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 application was denied by the District Director, Washington, D.C. and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan who is seeking to adjust his status to that of lawful permanent resident under section 13 of the Act of 1957 ("Section 13"), Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, 8 U.S.C. § 1255b, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

The district director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent his return to Pakistan or that his adjustment would serve the national interest. *Decision of District Director* dated April 17, 2001.

On appeal, counsel states that the district director erred in finding that the applicant made a "material misrepresentation" when he returned and was admitted to the United States using his A-2 visa after his employment at the Pakistani Embassy had been terminated. Counsel also observes that the district director failed to provide the applicant with a copy of the sworn statement the applicant made at the time of his interview.

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.

8 U.S.C. § 1255(b).

Pursuant to 8 C.F.R. § 245.3, eligibility for adjustment of status under Section 13 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 that accredited the applicant, and that adjustment of the applicant's status to that of an alien lawfully admitted for 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 legislative history for Section 13 reveals that the provision was intended to provide adjustment of status for a "limited class of . . . worthy persons . . . left homeless and stateless" as a consequence of "Communist and other uprisings, aggression, or invasion" that have "in some cases . . . wiped out" their governments. Statement of Senator John F. Kennedy, *Analysis of Bill to Amend the Immigration Nationality Act*, 85th Cong., 103 Cong. Rec. 14660 (August 14, 1957). The phrase "compelling reasons" was added to Section 13 in 1981 after Congress "considered 74 such cases and rejected all but 4 of them for failure to satisfy the criteria clearly established by the legislative history of the 1957 law." H. R. Rep. 97-264 at 33 (October 2, 1981).

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

A review of the record establishes the applicant's eligibility for consideration under Section 13. The applicant was admitted in A-2 status on March 16, 1997 and served thereafter as a procurement clerk at the Embassy of Pakistan until the status was terminated on November 20, 1998. *Letter from ██████████ ██████████, Chief of Diplomatic Liaison Division, Visa Office, Department of State*, dated March 26, 2001. The applicant was again admitted to the United States in A-2 status on May 18, 1999. The applicant has testified that he entered the United States on this date with the belief that he would be offered a position in the Pakistani Embassy, but that this position was never offered him.

As per the requirements of Section 13, the applicant was admitted to the United States under section 101(a)(15)(A)(ii) of the Act but no longer held that status at the time of his application for adjustment in August 1999.

Although the record shows that the applicant was admitted under section 101(a)(15)(A)(ii) of the Act, it does not show that the applicant performed diplomatic or semi-diplomatic duties. As stated above, the State Department has reported that the applicant held the position of procurement clerk. In a sworn statement taken at an interview on February 26, 2001, the applicant indicated that he was also a "superintendent" at the Embassy of Pakistan, and supervised staff, but there is no independent evidence supporting this claim. Going on record without supporting documentary evidence is not sufficient to meet the applicant's 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)). The applicant described his duties as a procurement clerk as follows: "I sorted all incoming mail, typing and give to officers for signing." The AAO concludes that the applicant's position was clerical in nature, and not diplomatic or semi-diplomatic. Consequently, the applicant is not eligible for benefits under Section 13.

Likewise, even if the applicant were found to have performed diplomatic or semi-diplomatic duties, the applicant has failed to demonstrate that compelling reasons prevent his return to Pakistan. In his sworn

statement made at the time of his interview, the applicant stated that he was not afraid of persecution in Pakistan. He also indicated that he had returned to Pakistan since his position was terminated. The State Department has objected to the applicant being granted adjustment of status. *See Letter from [REDACTED]*, dated March 26, 2001. Finally, in a statement submitted in support of his application, the applicant indicates that economic and political conditions in Pakistan are poor, but fails to submit evidence showing that there are compelling reasons that prevent his return there.

As discussed above, the legislative history of Section 13 shows that Congress intended that “compelling reasons” relate to political changes that render diplomats and foreign representatives “stateless or homeless” or at risk of harm following political upheavals in the country represented by the government which accredited them. The general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13.

The AAO acknowledges that the applicant has submitted evidence showing his and his family’s contributions to the United States. However, as the applicant has failed to demonstrate that there are compelling reasons preventing his return to Pakistan, he is ineligible to adjust status under Section 13 and a determination as to whether the applicant’s adjustment would be in the national interest is unnecessary.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. He has failed to establish that he served in a diplomatic or semi-diplomatic capacity or that there are compelling reasons preventing his return to Pakistan. 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 that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.