

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

A3



FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: APR 25 2008

IN RE: Applicant: [REDACTED]

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:

SELF-REPRESENTED

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 Field Office 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 Bangladesh 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)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

The field office director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that his duties as a clerk at the Embassy of Bangladesh were diplomatic or semi-diplomatic in nature. *Decision of Field Office Director* dated October 25, 2007.

The applicant's wife [REDACTED] and children [REDACTED] each submitted a separate Application to Register Permanent Residence or Adjust Status (Form I-485) seeking to adjust status under section 13 as the applicant's dependant family members. The field office director issued decisions denying these applications on the basis of the applicant's ineligibility for benefits under section 13. The applicant has appealed each of these decisions.

On appeal, the applicant indicates that he was unaware that those performing clerical duties are not entitled to adjustment of status under section 13, but also states that he performed many semi-diplomatic duties while working at the Embassy of Bangladesh. The applicant does not specify which semi-diplomatic duties he performed.

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 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 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).

The record fails to establish the applicant's eligibility for consideration under section 13. The applicant was admitted to the United States in A-2 status on October 12, 2002 and served thereafter as a clerk at the Embassy of Bangladesh until the status was terminated on September 2, 2006. *See Notice of Termination of Diplomatic, Consular, or Foreign Government Employment from Muhammad Zulqar Nain, First Secretary, Embassy of Bangladesh*, dated February 15, 2006. As per the requirements of section 13, the applicant was admitted to the United States under section 101(a)(15)(A)(i) of the Act but no longer held that status at the time of his application for adjustment on March 30, 2006. However, the record does not show that the applicant performed diplomatic or semi-diplomatic duties. In recommending that the application be denied, the State Department has reported that the "applicant's duties were inherently clerical in nature." *See* Interagency Record of Request (Form I-566). Though the applicant has stated that he performed semi-diplomatic duties, there is no independent evidence in the record 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)). Therefore, the AAO concurs with the field office director that the applicant's position was clerical in nature, and not diplomatic or semi-diplomatic, and that the applicant is not eligible for adjustment of status under section 13.

For the reasons discussed above, the AAO finds that the applicant and his dependant family members are not eligible for adjustment under section 13. The applicant has failed to establish that he served in a diplomatic or semi-diplomatic capacity. 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.