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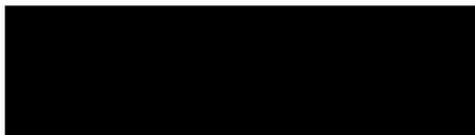
U.S. Department of Homeland Security  
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U.S. Citizenship  
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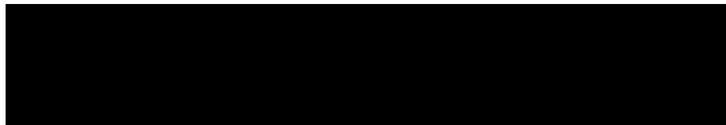


FILE: [Redacted] Office: WASHINGTON DISTRICT Date: **AUG 20 2008**

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The field office director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that he performed diplomatic or semi-diplomatic duties, that compelling reasons prevent his return to Bangladesh, or that his adjustment would be in the national interest. *Decision of Field Office Director*, dated January 10, 2008.

On appeal, counsel contends that, based on the field office director's definition of diplomacy, the applicant performed duties of a diplomatic or semi-diplomatic nature. *Legal Brief in Support of Appeal* at 5-8. Counsel asserts that the applicant's reasons for not returning to Bangladesh—political turmoil, political instability, social instability, and other difficulties of living in Bangladesh—are compelling reasons. *Id.* at 9. Counsel states that the applicant intends to utilize his experience and knowledge in the national interest. *Id.*

The record contains, among other documents, a letter dated March 28, 2007 from [REDACTED], Third Secretary, Permanent Mission of Bangladesh to the United Nations; tax records, identification cards and birth records.

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 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 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 last admitted in G-1 status on February 18, 2007 and served as an administrative officer at the Permanent Mission of Bangladesh to the United Nations from June 30, 2001 to March 28, 2007. See *Sworn Statement of* dated July 23, 2007; *Letter from* *Third Secretary, Permanent Mission of Bangladesh to the United Nations, Washington, D.C.*, dated March 28, 2007; *Form I-566, Form I-94*.

The record shows that the applicant was admitted under section 101(a)(15)(G)(i) of the Act, but the field office director found that the applicant did not perform duties of a diplomatic or semi-diplomatic nature. The AAO does not concur. The field office director determined that the applicant's duties were not consistent with the responsibilities of a diplomat as described in the definition of diplomacy in *Black's Law Dictionary*. The terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. However, 8 C.F.R. § 245.3 does provide that those duties of a custodial, clerical, or menial nature are not to be considered diplomatic or semi-diplomatic. The essential role of a diplomat is the representation of a country in its relations with other countries, or, as in this case, international governing bodies. See *American Heritage Dictionary of the English Language, 4th Edition, 2000* (Diplomat: One, such as an ambassador, who has been appointed to represent a government in its relations with other governments); *Black's Law Dictionary, 8th Edition, 2004* (Diplomacy: The art and practice of conducting negotiations between national governments). The AAO acknowledges that that diplomatic representation may encompass many duties and that determination of whether an accredited official performed diplomatic or semi-diplomatic duties is a case-by-case determination. The inclusion of the term semi-diplomatic in 8 C.F.R. § 245.3 indicates that those not engaged in overt negotiation or representation, but who perform duties in direct support of such activities, may also be considered for adjustment of status under Section 13 unless their duties are merely custodial, clerical or menial.

A review of the record demonstrates that the applicant performed duties of a diplomatic and semi-diplomatic nature. The evidence shows that the applicant, as an administrative officer, prepared various drafts, statements and communications concerning U.N. committees, councils and other U.N. bodies in connection with U.N. Secretariat elections, and maintained communication with regards to these elections with other embassies, missions and the Ministry of Foreign Affairs in Bangladesh. The description of the applicant's duties indicates that he was required to draft, not merely transcribe or type, official statements and communications, and that he engaged in direct communication with other foreign officials concerning official activities at the U.N. Such duties are not merely clerical or menial. Accordingly, the determination by the field officer director that the applicant did not perform diplomatic or semi-diplomatic duties is withdrawn.

Nevertheless, the AAO concurs with the field office director's determination that the applicant has failed to establish compelling reasons that prevent his return to Bangladesh. The applicant indicated in his sworn statement that he cannot return to Bangladesh because of political turmoil, political instability, social insecurity, and economic and cultural difficulties there. He states that even government officials like himself have been subject to harm in Bangladesh. However, the applicant does not provide any other evidence to substantiate his claims or any information concerning a specific threat against him by the government of Bangladesh or others in Bangladesh. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See, e.g., 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)). Likewise, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO therefore concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to Bangladesh. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Bangladesh, the question of whether adjustment of status would be in the national interest need not be addressed.

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 there are compelling reasons preventing his return to Bangladesh. 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.