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U.S. Citizenship
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FILE: [Redacted] Office: WASHINGTON DISTRICT Date: **AUG 28 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.

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

The field office director denied the application for adjustment of status after determining that the applicant failed to demonstrate that he performed diplomatic or semi-diplomatic duties, that compelling reasons prevent his return to Bangladesh or that adjustment would be in the national interest of the United States. *Decision of Field Office Director*, dated September 20, 2007.

On appeal, the applicant states that the decision was legally and factually incorrect. He states that his main purpose for coming to the United States was to seek better educational opportunities for his children, which they are continuing to pursue. He indicates that in 2004 he had heart surgery and he still requires medication for his condition. He asserts that he cannot afford these medicines in Bangladesh. He states that he has been jobless since 2002, but that his family members support him through their employment.

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.

Section 13 requires that an applicant for adjustment of status under this provision have "compelling reasons demonstrating that the alien is *unable* to return to the country represented by the government which accredited the" applicant. (Emphasis added). The term "compelling" must be read in conjunction with the term "unable" to correctly interpret the meaning of the words in context. Thus, reasons that are compelling are those that render the applicant unable to return, rather than those that merely make return undesirable or not preferred from the applicant's perspective. The "compelling reasons" standard is not a merely subjective standard. Aliens seeking adjustment of status under Section 13 generally assert the subjective belief that their reasons for remaining in the United States are compelling, or that it is keenly interesting or attractive to them to remain in the United States rather than return to their respective countries. What Section 13 requires, however, is that the reasons provided by the applicant demonstrate compellingly that the applicant is unable to return to the country represented by the government which accredited the applicant.

Furthermore, even where the meaning of a statutory provision appears to be clear from the plain language of the statute, it is appropriate to look to the legislative history to determine "whether there is 'clearly expressed legislative intention' contrary to that language, which would require [questioning] the strong presumption that Congress expresses its intent through the language it chooses." *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 433, fn. 12 (1987).

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 June 6, 2002. The record reflects that the applicant served as an administrative officer/accountant at the Embassy of Bangladesh in Washington D.C. until he retired in March 2002. *See Sworn Statement of [REDACTED]*, dated December 7, 2005. The applicant filed his Application to Register Permanent Residence or Adjust Status (Form I-485) on June 16, 2004.

Although the record shows that the applicant was admitted under section 101(a)(15)(A)(ii) of the Act, and no longer maintaining such status at the time he filed for adjustment, it does not show that the applicant performed diplomatic or semi-diplomatic duties. 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 the standard definitions of terms such as diplomat, diplomatic and diplomacy are varied and broad, and that, in practice, diplomacy may encompass many responsibilities and duties. 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.

As stated above, the applicant held the position of administrative officer/accountant. In his sworn statement, the applicant indicates that his duties included administrative work, general work and making decisions on administrative work. The applicant has failed to provide further elaboration as to his duties on appeal. Based on the evidence in the record, the AAO concludes that the applicant's duties were clerical and menial in nature, rather than diplomatic or semi-diplomatic. Consequently, the applicant is not eligible for adjustment of status under Section 13.

The AAO also 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's stated reasons for not returning to Bangladesh are not compelling reasons under Section 13. 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, or the more favorable conditions or opportunities available in the United States, are not compelling reasons under Section 13. It is also noted that the State Department has objected to the applicant being granted adjustment of status under Section 13. *See Interagency Record of Request (Form I-566)*. 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 the Bangladesh.

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 performed diplomatic or semi-diplomatic duties or 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.