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



U.S. Citizenship  
and Immigration  
Services

*13*

[REDACTED]

FILE:

[REDACTED]

Office: WASHINGTON DISTRICT

Date:

**MAY 29 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:

[REDACTED]

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 on appeal to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a native and citizen of the 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 (the Act), 8 U.S.C. § 1101(a)(15)(A)(ii).

The district director denied the application for adjustment of status after determining that at the time he applied for adjustment under Section 13, the applicant was still maintaining diplomatic status. *Decision of District Director* dated November 28, 2007.

On appeal, counsel contends that the denial is based on legal error. *Brief in Support of Appeal* at 3. Counsel asserts that the regulation controlling adjustment of status under Section 13 is 8 C.F.R. § 245.3, and that this regulation does not require the termination of diplomatic status before the filing of an application for adjustment under Section 13. *Id.* Counsel contends that the only additional requirement for aliens maintaining diplomatic status to adjust to permanent resident status is imposed by the regulations at 8 C.F.R. §§ 247.11 and 247.12, which mandate the execution of "a written waiver of all rights, privileges, exemptions, and immunities under any law or any executive order..." *Id.* at 4-5. Counsel asserts that to require an applicant for adjustment of status under Section 13 to not be maintaining diplomatic status at the time of filing is not "sound policy" as it contradicts Section 245(c) of the Act, which prohibits adjustment of status to those who are in unlawful status on the date the adjustment application is filed. *Id.* at 6. Counsel contends that imposing such a requirement transforms what was intended to be a special benefit for diplomats to a special penalty, and amounts to an abuse of discretion by USCIS. *Id.* at 7. Counsel also asserts that the district director failed to provide a reasoned explanation for the denial. Finally, counsel observes that Pakistan is a country in turmoil, and that conditions there constitute compelling reasons preventing the applicant from returning. *Id.* at 8.

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).

Contrary to the assertions of counsel, the plain language of Section 13 requires that an alien must fail to maintain diplomatic or semi-diplomatic status in order to be considered for adjustment of status under this provision. Indeed, an applicant for adjustment of status under Section 13 must not be maintaining diplomatic status in order to apply for adjustment on this basis. Once the applicant establishes eligibility to apply by virtue of having had such status terminated, the criteria provided in part b of Section 13 are reviewed to determine if the applicant is eligible to be adjusted to lawful permanent resident status. The regulations cited by counsel, which pertain to adjustment of status generally, do not exempt an applicant for adjustment under Section 13 from meeting the threshold filing requirement as stipulated in the statute itself.

Pursuant to 8 C.F.R. 214.2(a), an alien admitted under section 101(a)(15)(A)(ii) of the Act maintains that status “for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status.” Thus, the authority to determine the date of termination of status under section 101(a)(15)(A)(ii) of the Act rests exclusively with the State Department. The AAO notes that there is no evidence in the record indicating the date on which the applicant’s status was formally terminated by the State Department. However, the applicant has submitted evidence showing that his employment at the Consulate General of Pakistan continued until at least January 2002. On his Form I-566 (Inter-Agency Record of Individual Requesting Change/Adjustment to, or from, A or G Status), signed on December 8, 2004, the applicant indicated that he was then maintaining A-2 status. The applicant submitted a letter from [REDACTED] Consular Attache at the Consulate General of Pakistan in Los Angeles, in which it is indicated that the applicant was expected to be relieved of his duties at the Consulate in January 2002. The applicant also submitted a letter dated June 26, 2003 from [REDACTED] a of the Ministry of Foreign Affairs for Pakistan in which Mr. [REDACTED] states that the applicant served as an accountant at the Consulate General of Pakistan in Los Angeles from 1999 to 2002.

An application for adjustment of status under Section 13 filed while the applicant is maintaining status under section 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Act should be rejected. However, rejection of the application on this ground does not preclude the applicant from filing a new application once the requirement for applying—failure to maintain status—has been met.

The AAO concurs therefore with the district director that the applicant was admitted to the United States under 101(a)(15)(A)(ii) of the Act, was maintaining that status at the time of his application for adjustment on or before December 17, 2001, and therefore was not eligible to apply for adjustment under Section 13 at the time of filing.

Beyond the decision of the district director, the applicant has also not demonstrated that he performed diplomatic or semi-diplomatic duties as required for adjustment of status under Section 13. 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 applicant served as an accountant at the Consulate General of Pakistan. In his letter, Mr. [REDACTED] indicates that besides accounting duties, the applicant performed duties of an administrative nature, protocol duties, purchasing of public store/machinery and equipment, maintenance of embassy buildings, maintenance of personnel files and records, arranging of ceremonial functions and disbursement of emoluments to the officials. The AAO determines that the duties performed by the applicant were custodial and clerical in nature, rather than diplomatic or semi-diplomatic. Consequently, the applicant would not be eligible for adjustment of status under Section 13 should he choose to reapply.

The AAO notes that there is an unadjudicated I-589, Application for Asylum and for Withholding of Removal, in the applicant's file.

As stated above, the applicant is not eligible for consideration under Section 13 because he was still maintaining status under 101(a)(15)(A)(ii) of the Act at the time of filing and because he did not perform duties of a diplomatic or semi-diplomatic nature. 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.