

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

A₃



FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: **OCT 03 2008**

IN RE: Petitioner: [REDACTED]

PETITION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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 District Director, Washington, D.C. denied the Form I-485, Application for Permanent Residence. The matter is before the 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 a lawful permanent resident under section 13 of the Immigration and Nationality Act (the Act) of 1957, Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Act.

The District Director denied the application, determining that the applicant failed to demonstrate he was unable to return to Pakistan or that his adjustment of status would be in the national interest. *Decision of the District Director*, dated April 5, 2008.

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 of the 1957 Act 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 which 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 record. In making a determination of statutory eligibility, Citizenship and Immigration Services (CIS) is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The applicant was admitted to the United States on August 6, 1999 pursuant to section 101(a)(15)(A)(ii), 8 U.S.C. § 1101(a)(15)(A)(ii). The Consulate General of Pakistan, Los Angeles, California, indicated that the applicant worked in the Trade Division as a Commercial/Marketing Assistant from August 1999 to June 2005. *Letter from Consulate General of Pakistan*, dated March 31, 2006. U.S. Department of State records reflect that the applicant’s position was terminated on June 30, 2005.

Section 13(a) requires that an alien not be maintaining status in order to *apply* for adjustment of status. Once the applicant has established that initial eligibility criteria and has applied, then the criteria found in Section 13(b) are considered in determining if the applicant is eligible to be adjusted to permanent resident status. An applicant for adjustment of status under Section 13 must not be maintaining diplomatic status in order to apply for adjustment under Section 13. His status must therefore be terminated prior to the date on which the adjustment application is filed. 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. An application for adjustment of status under Section 13 filed while the applicant is maintaining diplomatic or semi-diplomatic status is properly denied.

In the present matter the record supports that the Department of State terminated his diplomatic status under 101(a)(15)(A)(ii) of the Act on June 30, 2005, prior to September 21, 2005, the date that he filed his Form I-485 application. Thus, the applicant meets the initial eligibility criteria under Section 13(b).

Before the AAO is whether the record establishes that the applicant, at the time of the director’s April 5, 2008 decision, had compelling reasons that precluded his return to Pakistan and that his adjustment would have served U.S. national interests – the requirements of section 13(b) of the 1957 Act.

Counsel contends that the applicant and his family members risk negative consequences should they return to Pakistan. *Brief in Support of Appeal*, dated April 23, 2008. Specifically, counsel asserts that political stability is deteriorating in Pakistan, citing the assassination of the former Prime Minister and escalating violence. *Id.* at 4-7. Counsel claims that human rights violations are worse than they were when the applicant filed his Form I-485 application. *Id.* at 5. Counsel references news articles that describe incidents of violence, including an attack against U.S. Federal Bureau of Investigation agents and tribal violence. *Id.* at 5-6. Counsel asserts that the applicant’s children will be harmed should they return to Pakistan, as they may be associated with the United States, and his daughter could be subjected to general harms that are prevalent against women. *Id.* at 7. Counsel

provides that economic and educational opportunities would be limited for the applicant's children, in part due to their lack of Urdu language proficiency. *Id.* at 7-8.

Counsel asserts that granting the applicant permanent residence is in the national interest of the United States. *Id.* at 9. Counsel explains that the applicant operates a small watch retail and repair business, thus he contributes to the U.S. economy, pays taxes, and encourages local business transactions. *Id.* at 10. Counsel contends that the applicant's son also operates a watch repair business, and the applicant's daughter seeks to open a beauty salon. *Id.* at 10-11. Counsel describes the applicant's children's educational goals, and asserts they will further contribute to the United States in the future. *Id.* at 11-12.

The applicant explained that he was due to return to an assignment in Pakistan in June 2005, yet he voluntarily retired in order to remain in the United States. *Statement from the Applicant*, dated April 15, 2008. He indicated that at the time there was political tension and social unrest in Pakistan, and he did not wish for his children to grow up in such an environment. *Id.* at 1. In a prior statement, the applicant emphasized that he did not wish to return to Pakistan because he wanted his children to complete their education and work in the United States. *Prior Statement from the Applicant*, dated April 3, 2006.

The record contains copies of reports and articles on conditions in Pakistan, including human rights abuses; statements from the applicant, the applicant's sons, and the applicant's daughter; briefs from counsel; copies of documents relating to the applicant's children's educational activities; tax records for the applicant and his eldest son; a copy of a birth record for the applicant; a copy of the applicant's marriage certificate, and; correspondence from the Consulate General of Pakistan, Los Angeles, California. The entire record was considered in rendering the present decision.

Upon review, the applicant has not shown by a preponderance of the evidence that he is unable to return to Pakistan. The applicant submits numerous articles and reports on conditions in Pakistan. However, the applicant has not shown that he is at particular risk due to his prior association or activities with a government of Pakistan. The applicant served in the United States on behalf of the Pakistani government from August 1999 to June 2005, he applied for adjustment of status on September 21, 2005, and the District Director denied his application on April 5, 2008. During this entire period President Pervez Musharraf was continuously in power.¹ While conditions in Pakistan are challenging, and human rights abuses are clearly documented, the applicant has not shown that circumstances sufficiently changed during or after his tenure in the United States, as contemplated by 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. Preexisting risks, inconveniences, and hardships associated with relocating to another country are not compelling reasons under Section 13. The applicant has failed to demonstrate that the government of Pakistan will not allow his return to the country, or that his past employment with the government of President Musharraf places him and his family in danger and renders them unable to return to Pakistan. The AAO recognizes that the applicant

¹It is noted that President Pervez Musharraf resigned on August 18, 2008.

wishes for his children to complete their education in the United States and realize their goals of building careers in the country. However, the applicant has failed to demonstrate that he or any member of his immediate family have compelling reasons as contemplated under Section 13 that prevent them from returning to Pakistan.

Based on the foregoing, the applicant has not shown compelling reasons demonstrating that he is unable to return to Pakistan, as required by the first prong of section 13(b) of the Act of 1957.

The applicant has not shown that adjusting his status to lawful permanent resident will benefit U.S. national interests. Counsel contends that the applicant's and the applicant's children's operation of small businesses represents contributions to the U.S. economy such that their presence is in national interests of the United States. The applicant has not described other factors which reflect that approving the present application will benefit the United States. While the AAO acknowledges the value of small businesses and the efforts of individuals working in and contributing to the U.S. economy, the applicant has not sufficiently shown that his presence will benefit the United States as contemplated by section 13(b) of the 1957 Act. Accordingly, the applicant has not shown that he meets the second prong of section 13(b) of the 1957 Act.

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.