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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: WASHINGTON DISTRICT

Date:

SEP 10 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:

[REDACTED]

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 had failed to demonstrate he was unable to return to Pakistan. *Decision of the District Director*, dated November 29, 2007.

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 April 6, 2002 pursuant to section 101(a)(15)(A)(ii), 8 U.S.C. § 1101(a)(15)(A)(ii). The Embassy of Pakistan, Washington, DC, filed Form DS-2008 with the U.S. Department of State (DOS) to give notice that the applicant’s position was terminated on March 31, 2003. The DOS has confirmed this date of termination. The applicant filed his Form I-485 application for adjustment of status under section 13 on April 17 2003, after the termination of his status. He therefore meets the basic eligibility criteria to apply for adjustment under section 13 of the Act.

Also before the AAO is whether the record establishes that the applicant, at the time of the director’s November 29, 2007 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, the applicant’s wife, the applicant’s two daughters, and the mother of the applicant’s two daughters are at risk of harm should they return to Pakistan due to the applicant’s actions which are contrary to cultural practices in Pakistan. *Brief in Support of Appeal*, dated June 13, 2008. The applicant explains that his wife has been unable to bear children, which has caused significant pressure to be placed on him by his family. *Statement from the Applicant*, dated October 13, 2005. He provides that this pressure was lessened when he and his wife relocated to the United States, yet he had two daughters out of wedlock with another married woman which was at odds with Pakistani customs. *Id.* at 4-5. The applicant explains that the mother of his two daughters is married to a man in Pakistan with ties to the North West Frontier Province, a radical Islamic fundamentalist province. *Id.* at 3-5. He states that this man threatened his life and indicated he would harm the applicant in Pakistan. *Id.* at 4-5.

Counsel further contends that approving the present application is in the national interest of the United States, as the applicant’s two daughters are U.S. citizens and they should be protected from residing in Pakistan or being separated from the applicant. *Brief in Support of Appeal* at 3.

The record contains copies of reports and articles on conditions in Pakistan, particularly related to harms against women; a statement from the applicant; a brief from counsel; copies of birth records for the applicant’s two daughters; a copy of the applicant’s marriage certificate; copies of documents in connection with the applicant’s medical treatment; copies of documents in connection with the applicant’s employment in the United States with the Embassy of Pakistan; a copy of a birth record for the applicant; a copy of the applicant’s passport, A-2 visa, and Form I-94 Departure Record, and; copies of financial and tax records for the applicant. 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, particularly with regard to harms against women. These documents reflect that the mother of the applicant's children may face harm should she return to Pakistan, due to the fact that she had an adulterous relationship that bore two children. However, whether or not the present application is approved does not impact whether the mother of the applicant's children may remain in the United States. Accordingly, potential harm to her is not relevant in the instant matter.

The applicant has not shown that he has custody of his two daughters born out-of-wedlock, or where they currently reside. Thus, the applicant has not established that they would be compelled to relocate to Pakistan if the applicant does.

The applicant has not shown that his wife was party to any actions that would warrant serious consequences in Pakistan, thus the applicant has not established that her return poses a risk of harm to her or the applicant.

The applicant contends that he will be harmed by the husband of the mother of his children, possibly through other agents. Yet, the applicant has not shown that he is at risk of harm everywhere in Pakistan, such that there are no locations he can safely reside. The applicant indicated that the family of the mother of his children have ties to the North West Frontier Province that is known for Islamic extremism, yet he has not established that he would be compelled to reside there, or that such residents would seek or find him in other parts of Pakistan. Nor has the applicant shown that he has engaged in actions that are sufficiently anathema to Pakistani customs as to subject him to harm by those other than the family members of his children's mother. The applicant has not established that his actions in the United States would be generally known or discoverable in Pakistan. Though the applicant has submitted reports and articles to show that harm may come to the mother of his children in Pakistan, he has not identified country reports that clearly show that he would be subjected to such harm.

It is further noted that the applicant's stated reasons for not returning to Pakistan 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 applicant has submitted reports to indicate that the government of President Pervez Musharraf has permitted abusive traditional practices to continue in Pakistan,¹ yet he has not shown that he is at risk of harms that are directly related to the government that accredited him.

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 approving the present application is in the national interest of the United States, as the applicant's two daughters are U.S. citizens and they should be protected from residing in Pakistan or being separated from the applicant. As noted above, the applicant has not shown that he has custody of his daughters,

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

that they reside with him, or that his departure would require them to relocate with him. Nor has he shown that he has significant contact with his daughters such that his absence would cause them hardship. The applicant has not presented other compelled reasons why approving the present application is in the national interest. 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.