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

A3

[redacted]

FILE: [redacted] Office: WASHINGTON DISTRICT Date: FEB 20 2009

IN RE: [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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting 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 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, 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 had failed to demonstrate that compelling reasons prevent his return to Pakistan. The field office director also noted that the Department of State issued its opinion on September 13, 2007 advising that it could not favorably recommend the matter. *Decision of Field Office Director,* dated October 25, 2007.

On appeal,[1] the applicant asserts that the conditions in Pakistan would put his family's life at risk and their stay in the United States would save them from any "mis-happening" in Pakistan.

The applicant provided an October 2, 2001 personal statement in support of the Form I-485, Application to Register Permanent Residence or Adjust Status, and a sworn statement before a district adjudications officer on October 3, 2001.

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 [Department of Homeland Security] for adjustment of his status to that of an alien lawfully admitted for permanent residence.

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[1] The AAO notes that the applicant's spouse and his five children filed Section 13 adjustment applications, which were also denied. The applicant filed one Form I-290B, Notice of Appeal, for his wife who has two A numbers ([redacted] and [redacted]) and three of his five children (A numbers - [redacted] and [redacted], apparently claiming that the appeal also included these "derivative dependents." Two of his children filed Forms I-290B (A number [redacted] and A number [redacted] Section 13 of the Act refers to "immediate family," not "derivatives" or "dependents." Therefore, to appeal a denial decision, each family member must submit a Form I-290B. As the applicant filed only one Form I-290B for himself and failed to file a Form I-290B for his spouse and three of his five children, the decisions to deny the applications of his spouse and three of his children (A numbers - [redacted], and [redacted] stand. In separate decisions, the AAO has adjudicated the appeals of the applicant's two children (A number [redacted] and A number [redacted]) who properly submitted Forms I-290B.

> (b) If, after consultation with the Secretary of State, it shall appear to the satisfaction of the [Department of Homeland Security] 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 [Department of Homeland Security], in its discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the [Department of Homeland Security] approving the application for adjustment of status is made. 8 U.S.C. § 1255b(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.

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).

The AAO concurs with the field office director's determination that the applicant failed to establish compelling reasons that prevent his return to Pakistan. The applicant's stated reasons for not returning to Pakistan are not compelling reasons under Section 13. As referenced 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. 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.

According to the American Heritage Dictionary, Fourth Edition, the plain meaning of the term "unable" is "lacking the necessary power, authority, or means." Thus, 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 interesting or attractive to them to remain in the United States rather than return to their respective countries.

In this matter, the applicant has provided the following information regarding his employment and subsequent termination of employment with the government of Pakistan. The applicant in his October 3, 2001 sworn statement indicated he was transferred to the Embassy of Pakistan as a stenographer on July 14, 1996 on an A-2 visa for a four-year term. The Department of State record shows that the applicant's status was terminated on August 18, 2000. In the applicant's October 2, 2001 statement, the applicant indicated that upon the completion of his tenure, he requested leave for a few months due to the medical conditions of his wife and son. He indicated that his request was denied, even though he had leave credit. He stated further that he requested that he be allowed to retire but that also was denied and so he was left with no choice but to resign and forfeit his pension and gratuity for his 25 years of service. The applicant indicated further that he did not know how the Pakistani government would react if he returned to Pakistan and requested his service benefits through court. In his statements, the applicant also noted the economic conditions and the difficulty his children would have in completing their education, as well as his fear of the Taliban who were creating danger and instability in Pakistan.

On appeal, the applicant provides a copy of an order from the Government of Pakistan Ministry of Foreign Affairs, dated June 17, 2002, finding the applicant guilty of misconduct and dismissing him from government service. The applicant also states that as Pakistan has been operating under martial law since 1999, it is his belief that the martial law authorities are torturing the well-educated middle class. The applicant notes that in the deteriorating conditions of Pakistan it would not be safe to take his family back to Pakistan as they could become victims of looting, kidnapping, or death.

The AAO acknowledges the current conditions in Pakistan but finds that the applicant has not provided reasons that demonstrate compellingly that he is unable to return to Pakistan. In this matter, the applicant has not provided compelling reasons related to political changes in Pakistan 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 AAO notes that the applicant has not submitted evidence showing that he is at greater risk of harm because of his past government employment, political activities or other related reasons. The AAO acknowledges the applicant's dismissal from government employment, but notes that such dismissal is not unreasonable when the applicant refused to comply with the Pakistan government's instructions to return to Pakistan. The AAO notes that the applicant has not provided supporting evidence indicating that he was unable to

return to Pakistan due to the medical conditions of either his son or his wife. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). The applicant's indication that he does not know how the Pakistani government will react to his request for a judicial determination regarding his service benefits is insufficient to conclude that the applicant will face harm because of his past government employment. The applicant's fear is speculative and not substantiated in the record.

The general inconveniences and hardships associated with relocating to another country and the desire for his children to have a United States university-level education are not compelling reasons under Section 13. As noted above, the AAO acknowledges the turmoil that exists in Pakistan today and as outlined in the newspaper clippings the applicant submitted on appeal. However, also as determined above, the applicant has not provided evidence that he is at greater risk of harm from the Pakistani government due to any political changes in Pakistan that render diplomats and foreign representatives "stateless or homeless" or at risk of harm because of his political activities. It is also noted that the State Department has objected to the applicant being granted adjustment of status and indicated that it does not believe that compelling reasons prevent the applicant's return to Pakistan. *See* Interagency Record of Request (Form I-566). The AAO concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to Pakistan. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Pakistan, the question of whether adjustment of status would be in the national interest need not be addressed.

Beyond the decision of the director, the AAO does not find that the applicant established eligibility for consideration under Section 13. The applicant was admitted in A-2 status and served as a stenographer at the Embassy of Pakistan in Washington, D. C. Although the record shows that the applicant was admitted under section 101(a)(15)(A)(ii) of the Act, the record does not include a detailed description of the applicant's duties in the role of stenographer. The applicant, in his October 3, 2001 sworn statement indicated that he looked after the work of the office of the Deputy Chief of the Mission, that he took dictation, typed, and performed other office work. The applicant indicated his belief that these duties were semi-diplomatic. Although the applicant equated these duties to semi-diplomatic duties, the applicant does not explain why or how the clerical duties should be considered semi-diplomatic duties rather than clerical duties.

The AAO observes that the essential role of a diplomat is the representation of a country in its relations with other countries. *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* (Diplomacy: The art and practice of conducting negotiations between national governments). Both section 101(a)(15)(A) of the Act and the Vienna Convention recognize that certain accredited employees or officials admitted to serve within embassies or other diplomatic missions are not "diplomatic" staff. Whereas ambassadors, public ministers, and career diplomatic or consular officers are admitted under section 101(a)(15)(A)(i) of the Act, those admitted under section 101(a)(15)(A)(ii) such as the applicant are described only as "other officials and employees" accepted on the basis of reciprocity. The Vienna Convention refers to such

personnel as administrative and technical staff, service staff, or personal servants. *The Vienna Convention on Diplomatic Relations,* Art. 1 (April 18, 1961), 500 U.N.T.S. 95. The record does not show that the applicant had any formal advisory or decision-making role at the Embassy or that he represented Pakistan before the United States government or any foreign government in any official capacity. The record demonstrates that the applicant worked in the Pakistan Embassy as a stenographer with the attendant responsibilities of a stenographer but does not include evidence that he was entrusted with duties of a diplomatic or semi-diplomatic nature.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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 was entrusted with duties of a diplomatic or semi-diplomatic nature and that there are compelling reasons preventing his return to Pakistan. 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.