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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: **JUL 31 2013** Office: WASHINGTON DISTRICT FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Permanent Resident Pursuant to Section 13 of the Immigration and Nationality Act of 1957, Pub. L. No. 85-316, 71 Stat. 642, as amended.

ON BEHALF OF APPLICANT:  
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

  
for Ron M. Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Washington, D.C. and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO will be affirmed and the application remains denied.

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 Act of 1957 ("Section 13"), Pub. L. No. 85-316, 71 Stat. 642, as amended, 95 Stat. 1611, 8 U.S.C. § 1255b, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The field office director denied the Form I-485, Application to Register Permanent Residence or Adjust Status, on August 13, 2008. The field office director determined 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 October 3, 2006 and again on April 22, 2008, advising that it could not favorably recommend the applicant's adjustment of status to that of a lawful permanent resident because the applicant's reasons to remain in the United States are not compelling. On appeal, counsel for the applicant asserted that the field office director erred in her decision; the AAO, however, concurred with the field office director's determination.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision

On motion, counsel for the applicant in essence restates the same reasons he previously provided on appeal as the compelling reasons why the applicant cannot return to Pakistan, which are; the medical condition of his children and his desire that they obtain medical treatment in the United States; and the continued education of his children in the United States because they do not read and/or write Urdu, a Pakistani language. Additionally, counsel asserts that the country condition in Pakistan has deteriorated due in part to extrajudicial killings, torture, disappearances in the hands of security forces as well as militant, terrorist and extreme groups; the escalation of the Shia/Sunni Muslim conflict world-wide and in Pakistan; and the presence of Taliban and suicide bombing squads in Pakistan. The applicant submits a copy of a letter from his daughter's physician, [REDACTED] dated August 10, 2012, related to the medical condition of the applicant's daughter in support of said motion. This document has been previously submitted into the record.

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.

(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).

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 and 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 legislative history of Section 13, including the 1981 amendment adding the term "compelling reasons," 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.

As fully discussed in its July 25, 2012, the AAO determined that the applicant failed to provide sufficient and probative evidence demonstrating that he has compelling reasons that preclude his

return to Pakistan. The AAO had considered the medical condition of the applicant's children and the applicant's desire to remain in the United States for the social and educational well-being of his children and found them insufficient as compelling reasons that prevents the applicant from returning to his country. On motion, counsel for the applicant cites the deteriorating security situation in Pakistan as an additional compelling reason why the applicant cannot return to Pakistan.

The AAO acknowledges the deteriorating security condition in Pakistan. The AAO also notes the applicant's concern about the security and overall well-being of his family in Pakistan and his desire to remain in the United States with his family. However, a review of record including statements and documents submitted on motion, fail to establish that the applicant and his family are at greater risk of harm because of his past employment for the Pakistani government in the United States. The AAO notes the risks of living in certain areas of Pakistan as the turmoil and violence exercised by extremist groups and anti-government factions continue to exist. We note that the purpose of Section 13 is to offer protection to those individuals who are unable to return to the State that accredited them due to changes in that State government and because they would be targeted for their past specific role in working for that State. In this case, the applicant has not provided sufficient credible and probative evidence demonstrating that he is at greater risk of harm because of his past government employment, political activities, or other related reason. The evidence of record does not show that the applicant is unable to return because of any action or inaction on the part of the government of Pakistan or other political entity there as required under Section 13. It is also noted that the U.S. State Department has recommended that the application be denied as the applicant had failed to provide compelling reasons that prevent his return to Pakistan. *See* Interagency Record of Request (Form I-566).

As set forth in our previous decision, 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. The general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The information provided on motion does not present compelling reasons that prevent the applicant from returning to Pakistan. Thus, the applicant has failed to meet his burden of proof in this regard. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Pakistan, the question of whether his adjustment of status would be in the national interest need not be addressed.

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 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 or she is eligible for adjustment of status. The applicant has failed to meet that burden. Accordingly, the AAO's decision to dismiss the appeal will be affirmed.

**ORDER:** The previous decision of the AAO dated July 25, 2012, is affirmed. The application remains denied.