



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **SEP 13 2013** Office: NATIONAL BENEFITS CENTER

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,

Ron M. Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, National Benefits Center. The matter 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 amended, 95 Stat. 1611, 8 U.S.C. § 1255b, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

The 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 director also noted that the U.S. Department of State issued its opinion on February 9, 2013, recommending that the applicant’s request for adjustment of status in the United States be denied because the applicant presented no compelling reasons why he cannot return to Pakistan. *See Director’s Decision*, dated March 13, 2013.

The director also denied the application of the applicant’s spouse [REDACTED], his son [REDACTED] and his daughter [REDACTED] who each submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) under Section 13 as dependent derivatives of the applicant. The director issued separate decisions denying these applications. These dependents each filed a separate Form I-290B, Notice of Appeal or Motion. The AAO will issue a separate decision for each of the dependents.

On April 2, 2013, counsel for the applicant submitted a Form I-290B, Notice of Appeal or Motion, asserting that the director’s decision “is contrary to law and arbitrary and capricious.” Counsel also asserts that after the adjustment of status interview, “it became widely known that [the applicant] issued Pakistani visa to [REDACTED] [The applicant] cannot safely return to Pakistan.” Counsel submits an additional statement from the applicant and various news articles on the [REDACTED] incident.¹

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

¹ [REDACTED] is a former U.S. Special Forces Soldier /U.S. Consulate employee in Pakistan who was arrested in 2011 for the shooting deaths of two armed Pakistani men in Lahore, Pakistan.

(b)(6)

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.

A review of the record establishes the applicant's eligibility for consideration under Section 13 of the 1957 Act. The applicant was admitted into the United States on March 22, 2009, in an A-1 nonimmigrant status and served as [REDACTED] in Washington, D.C.² until the termination of his status by the U.S. Department of State on August 6, 2012. *See Record of Sworn Statement by Anjum Latif*, dated December 11, 2012; *See also, Notification of Termination from the U.S. Department of State, Office of Foreign Missions*. The applicant's duties include but were not limited to, issuing Pakistani visas to U.S. government officials, citizens of the United States and nationals from other countries as well as issuing Pakistani passports and notarizing documents. In this capacity, the applicant performed duties that were semi-diplomatic in nature. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on August 28, 2012. Therefore, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(i) of the Act but no longer held that status at the time of his application for adjustment of status on August 28, 2012.

The issues before the AAO in the present matter are, therefore, whether the record establishes that the applicant has compelling reasons that prevent his return to Pakistan and that his adjustment of status would serve U.S. national interests – requirements set forth in section 13(b) of the 1957 Act.

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.

² The record indicates that the applicant was initially admitted in an A-2 status on March 22, 2009, and that his status was subsequently changed to A-1 in August 2009.

§ 103.2(b)(16)(ii).

In a personal statement dated August 25, 2012, the applicant stated that the reason he does not want to return to Pakistan is that he wants his daughter to complete her college education in the United States. The applicant declared “it is our earnest desire to live in the United States for higher education with respect to better work opportunities and a good contributor to country’s economy.” The applicant also stated that his family is accustomed to and familiar with the living standard in the United States and will find it difficult to adjust to living in Pakistan. In addition, the applicant cited the recent uprising and “unpredictable political situation in Pakistan” and the “extremism and violent atrocities prevailing in the country” as additional reasons why he cannot return to Pakistan.

At his adjustment interview on December 11, 2012, the applicant stated under oath before an immigration officer that “the political uprising and instability in my country prevent me to go back to my country. Most importantly my children don’t want to go back because they have their education and a peaceful atmosphere.” In response to the question from the immigration officer whether there was any specific reason why he felt that his life would not be secure should he return to Pakistan, the applicant responded “No. we have decided that we will remain here.”

On appeal, counsel for the applicant asserts that the applicant’s identity has been widely publicized as the person who issued and personally signed the official visa to [REDACTED]. Counsel contends that “the US government bears full and complete legal and moral responsibility for the certain danger now faced by [the applicant] and his family,” and that the applicant “must be approved.” In an undated declaration, which the applicant submitted in support of the appeal, the applicant stated that it was solely his responsibility to issue visas to U.S. government officials and employees at the Embassy of Pakistan in Washington, D.C., that he issued the visa to [REDACTED] that a copy of the visa displaying his true and complete name and “distinctive” signature has been prominently displayed throughout Pakistan, and that after the public display of the visa bearing his name and signature, some of his colleagues warned him to be ready to “face the grave consequences of helping and issuing visas to Americans, which could be a cause of danger to my life in Pakistan.” The applicant indicated that the Minister of Interior was questioned by a leader of Jamiat-e-Islami, a radical group in Pakistan, which is also known for its anti-American stance, and that the minister identified the name of the person who issued the visa to [REDACTED] as ‘[REDACTED]’ The applicant further indicated that members of his family in Pakistan are terrified about the consequences of his name and signature being publicized all over Pakistan. The applicant claims that these are compelling reasons why he cannot return to Pakistan and that the government of Pakistan will be unwilling to offer him any protection.

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.

What Section 13 requires is that the reasons provided by the applicant demonstrate compellingly that the applicant is unable to return to the country represented by the government which accredited the applicant. The AAO finds that a review of the totality of the Section 13 legislative history supports the plain meaning of the language in Section 13 that those eligible for adjustment of status under Section 13 are those diplomats that have been, in essence, rendered stateless or homeless by political upheaval, hostilities, etc., and are thus *unable* to return to and live in their respective countries.

The AAO has reviewed the applicant’s statements, counsel’s assertions on appeal, and news articles submitted on appeal, and find the evidence insufficient to establish compelling reasons why the applicant cannot return to Pakistan. The AAO acknowledges the violent situation and lack of security in Pakistan caused in part by the political instability and by terrorist and other extremist groups operating in Pakistan and the risks of living in certain areas of Pakistan as the turmoil and violence by extremist and other terrorist groups in Pakistan persists. However, the applicant has not provided substantive evidence to establish that he and his family would be targeted by these groups or by the current government of Pakistan because of his past government employment, political activities or other related reasons.

The AAO notes that the applicant had testified under oath in 2012 at his adjustment of status interview that the reason he does not want to return to Pakistan was for the education and general wellbeing of his family. The applicant was specifically asked at the same interview if there is any specific reason why he feels his life would not be secure in Pakistan and the applicant affirmatively stated no. It is only on appeal, after the applicant had received a denial letter that he claims persecution on account of his issuing a visa to an American consulate employee who was arrested for the shooting death of two armed Pakistani men. The AAO has reviewed the news articles submitted by the applicant on appeal and finds them insufficient to establish specific threat against the applicant or his family or that he would be subjected to persecution or harm as a result of his duties as a [REDACTED] for the Embassy of Pakistan in Washington, D.C. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO acknowledges the applicant's desire to remain in the United States for the education and overall wellbeing of his family, however, the applicant has failed to demonstrate that he is unable to return to Pakistan based on compelling reasons related 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 AAO further acknowledges the difficulties the applicant's children may encounter in adjusting to living in Pakistan after a prolonged period of absence from the country. However, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. Likewise, the general threat of terrorism is not a sufficiently compelling reason under Section 13.

In this matter, the AAO finds the record insufficient to establish that the applicant in his role as a returning diplomat would be at greater risk of harm because of his past government employment, political activities or other related reason. The applicant's desire to create a better life for his family in the United States is not considered a compelling reason that preclude his return to Pakistan under Section 13 of the Act. The evidence of record does not establish that the applicant is unable to return to Pakistan because of any action or inaction on the part of the government of Pakistan or other political entity there as required under Section 13.

Accordingly, the AAO finds that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to Pakistan for the purposes of Section 13. 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 that preclude 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 appeal will be dismissed.

ORDER: The appeal is dismissed.