



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JAN 06 2014** Office: NATIONAL BENEFITS CENTER

IN RE:

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:

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 (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 citizen of Afghanistan, 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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(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 Afghanistan. The director also noted that on February 22, 2013, the U.S. Department of State issued its opinion recommending that the adjustment of status application of the applicant be denied because the applicant presented no compelling reasons why he cannot return to Afghanistan. *See Decision of the Director*, dated March 12, 2013.

The director also denied the application of the applicant's spouse [REDACTED] his [REDACTED] who each submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) under Section 13 of the Act as derivative dependents 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 appeal, counsel for the applicant asserts that the director erroneously concluded that the applicant had not established compelling reasons that prevent his return to Afghanistan. Counsel also asserts that the director relied on the recommendation from the U.S. Department of State and did not conduct an independent analysis of the applicant's application. Counsel submits a statement, other documentary evidence and additional country condition information on Afghanistan in support of the appeal. *See Form I-290B, Notice of Appeal or Motion*, dated April 5, 2013.

The AAO conducts appellate review on a *de novo* basis. The AAO will consider all evidence in the record including evidence submitted on appeal in reaching a decision on this case.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 Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.

¹ The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

(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.

8 U.S.C. § 1255(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 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).

A review of the record establishes the applicant's eligibility for consideration under Section 13 of the 1957 Act. The applicant was last admitted into the United States on July 18, 1998 in a G-1 nonimmigrant status and thereafter served as [REDACTED] of Afghanistan to the United Nations in New York from September 13, 1999 until July 5, 2007, when his status was terminated. See *Letter from the [REDACTED] the United Nations*, dated July 27, 2007 and a copy of a *United Nations Notification of Final Departure of Members of [REDACTED]* signed by [REDACTED] of Afghanistan, dated July 27, 2007. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on July 26, 2007. 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)(G)(i) of the Act but no longer held that status at the time of his

application for adjustment of status on July 26, 2007.

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

The record contains statements detailing reasons the applicant considers compelling as to why he cannot return to Afghanistan. The evidence of record shows that the applicant's life and liberty will be in jeopardy if he were to return to Afghanistan. The record contains sufficient evidence demonstrating that former and current Afghan government officials, like the applicant and their families, are specifically targeted and harmed by the Taliban and other insurgent groups in Afghanistan because of their employment with the government of Afghanistan. The record includes copies of United Nations Press Releases from 1997 and 2001 containing speeches made by the applicant where he was critical of the Taliban and their actions against the citizens of Afghanistan. The applicant is very fearful that he and his family would be harmed by the Taliban if he returned to Afghanistan.

On appeal, counsel reiterates the applicant's fear that he and his family will be at risk of harm if they were to return to Afghanistan after serving the Afghan government for a significant period of time. Counsel referred to the applicant's statements while he served as Counselor of Afghanistan to the United Nations. Specifically, counsel states that during his tenure of service for the government of Afghanistan in 1997 and 2001, the applicant addressed the United Nations General Assembly and publically opposed the credentials presented from the then Head of the Government of the Islamic Emirate of Afghanistan for a delegation headed by [REDACTED] as Designate Permanent Representative. The applicant also publically opposed the recognition by the United Nations of the Taliban government and of [REDACTED] as a representative of the Taliban. Counsel indicates that [REDACTED] is currently residing in Afghanistan, and is associated with the Taliban and that the applicant is fearful of [REDACTED] actions against him and his family if they returned to Afghanistan.

Current country condition information demonstrates that the applicant's return to Afghanistan may place his and his family's lives in jeopardy at the hands of the Taliban or other insurgent groups because of his past employment with the government of Afghanistan. Country condition information on Afghanistan shows that there have been assassinations of government officials by the Taliban. Based on the evidence of record in this case and the current condition in Afghanistan, the applicant appears to be at a greater risk of harm in the hands of the Taliban or other insurgent groups in the country because of his past government employment, political affiliation or other reasons.

In his decision to deny the application the director noted that the U.S. Department of State issued its opinion on February 22, 2013, recommending that the applicant's request for adjustment of status be denied because the applicant presented no compelling reasons why he is unable to return to Afghanistan. The AAO notes that the U.S. Department of State's opinion is a recommendation and not binding on the AAO authority to review cases on a *de novo* basis. Additionally, the AAO finds that the evidence submitted by the applicant on appeal and the recent country condition information on Afghanistan is sufficient to overcome the U.S. Department of State's recommendation.

Accordingly, the AAO finds that the applicant has presented sufficient evidence to establish that compelling reasons prevent his return to Afghanistan.

With regard to the second prong of section 13(b) of the 1957 Act, which requires the adjustment of the alien to serve the national interest, the AAO finds that the applicant did not address this issue – how his adjustment of status would serve the U.S. national interest. The applicant did not present any evidence to demonstrate that his adjustment of status would be in the U.S. national interest. While the applicant has established compelling reasons that preclude his return to Afghanistan, he failed to establish that his adjustment of status will serve U.S. national interests, a key requirement for adjustment of status under Section 13 of the Act. Accordingly, the applicant has failed to meet his burden of proof that he is eligible for adjustment of status under Section 13 of the 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.