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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: WASHINGTON DISTRICT

Date:

**MAR 17 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:

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 Bangladesh 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 field office director denied the application for adjustment of status after determining that the applicant had not established that compelling reasons prevent his return to Bangladesh. The field office director also noted that the Department of State issued its opinion on April 2, 2008 advising that it could not favorably recommend this matter because the applicant's reasons to remain in the United States are not compelling.

On appeal, counsel for the applicant asserts that the applicant will face social nuisance if he returns to Bangladesh due to political instability and corruption and that he and his family members "will be persecuted, harassed, and kidnapped by low line thugs and goons." Counsel also contends that the applicant and his wife suffer from medical conditions that will be severely exacerbated if they return to Bangladesh and will also suffer emotional and financial hardship if they return to Bangladesh. The applicant notes that his two children are lawful permanent residents.

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. § 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 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. He entered the United States in a G-1 classification to work for the Permanent Mission of Bangladesh to the United Nations in New York. He began his service in October 2001 and was relieved of his duties on January 27, 2006. Per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States pursuant to 101(a)(15)(G)(i) of the Act but no longer held that status at the time he filed his application for adjustment on February 26, 2006.

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 Bangladesh. As noted 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. What Section 13 requires, however, 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. Even where the meaning of a statutory provision appears to be clear from the plain language of the statute, it is appropriate to look to the legislative history to determine "whether there is 'clearly expressed legislative intention' contrary to that language, which would require [questioning] the strong presumption that Congress expresses its intent through the language it chooses." *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 433, fn. 12 (1987). The 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.

In an initial statement, dated February 22, 2006, the applicant stated:

It is imperative for me to stay in the USA with my son. My daughter is also living in New York. Besides, living in this country for the last five years, I am more used to the American way of life.

In a September 21, 2006 sworn statement before a USCIS immigration officer, the applicant declared that he did not wish to go back to his country because his children and nearest relatives live in the United States. The applicant also indicated that the ambassador had told him that the Bangladesh Mission is considered a mini Bangladesh and that the applicant had confidential and secret information of his country. The applicant explained that if he returned to Bangladesh, because of the political instability in Bangladesh, he might be asked to divulge some of the confidential information, something that government regulations did not permit. The applicant added that if he did not divulge the information, when asked, he would be a victim of insecurity in his country. On appeal, as noted above, counsel asserts that the applicant will face social nuisance if he returns to Bangladesh due to political instability and corruption and that he and his family members "will be persecuted, harassed, and kidnapped by low line thugs and goons." Counsel also contends that the applicant and his wife suffer from medical conditions that will be severely exacerbated if they return to Bangladesh. The record on appeal includes: a letter from [REDACTED], dated September 22, 2008, indicating that the applicant suffers from hypertension, chronic chest pain, and shortness of breath and still needs further treatment; and a letter from [REDACTED] also dated September 22, 2008, indicating that the applicant's wife suffers from hypercholesterolemia, sleeping disorder, and ulcer and still needs further treatment.

The AAO has reviewed the applicant's statements and counsel's assertions and medical letters submitted on appeal. The AAO acknowledges the applicant's fear of returning to Bangladesh due to the lawlessness in areas of Bangladesh and the applicant's apprehension that he may be harassed or asked

to reveal information regarding his tour of duty for his government in the United States. However, the record in this matter does not present any specific evidence that the applicant would be targeted due to political changes in Bangladesh 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. Moreover, the applicant has not provided any evidence demonstrating that he would be a target of the government of Bangladesh. The applicant's fear is speculative and is not substantiated in the record. 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)).

In addition, the applicant's initial statement indicating that he is used to living in the United States and that his two children were lawful permanent residents does not meet the criteria for this benefit. Cultural assimilation in the United States is not a compelling reason as intended by Section 13 that makes the applicant unable to return to Bangladesh. The general inconveniences, subjection to social nuisance, and hardships associated with relocating to another country and the desire to remain in the United States to be close to his children are not compelling reasons under Section 13. The record shows that the applicant is able to return to Bangladesh, but that he does not desire to do so. The AAO acknowledges the medical conditions suffered by the applicant and his wife. However, the record does not support counsel's implication that the applicant's medical condition will be severely exacerbated if he returns to Bangladesh. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The evidence of record does not show that the applicant is unable to return to Bangladesh for the compelling reasons required under Section 13. 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 Bangladesh. *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 Bangladesh. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Bangladesh, the question of whether adjustment of status would be in the national interest need not be addressed.

Beyond the decision of the field office director, the AAO finds that the applicant has not established that he performed diplomatic or semi-diplomatic duties for the Permanent Mission of Bangladesh to the United Nations. The record shows that the applicant entered the United States in G-1 status, to work for the Permanent Mission of Bangladesh to the United Nations, as an "Administrative Officer." The AAO acknowledges the applicant's declarations in his sworn statement, dated November 6, 2007, indicating he was primarily involved with the ambassador and the economic minister and they were connected with the "USFB." The applicant noted: "[m]y primary responsibility was to prepare minutes for seminars for these agencies, and give it to my ambassador and upon his approval submit it to the respective agencies." The applicant also indicated that he was not involved with high ranking diplomats "but the ambassador and the economic minister from time to time instructed [him] to attend some of the international seminars for the United Nations."

The AAO also acknowledges the applicant's claim that his duties were semi-diplomatic; however, other than the general information cited above, the record does not include a detailed description of the applicant's duties in the role of administrative officer. The applicant does not provide sufficient information to enable USCIS to determine whether the applicant typed minutes for meetings or prepared them. Likewise, the record does not include sufficient information regarding the applicant's role in attending international seminars. It is unclear if he performed a clerical function or participated in the seminars. Again, 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. at 165. USCIS must rely on a detailed consistent description of the duties sufficient to enable a thorough review and accurate conclusion regarding the nature of the described duties and whether the duties are diplomatic, semi-diplomatic or are clerical and administrative. In this matter, the record is insufficient in this regard. For this additional reason, the application will not be approved.

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 the duties he performed were diplomatic or semi-diplomatic duties and that there are compelling reasons that prevent his return to Bangladesh. 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.