



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: WASHINGTON, D.C.

Date: OCT 20 2005

IN RE:

PETITION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

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 Immigration and Nationality Act (the Act) of 1957, Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, as an alien who has performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(ii) of the Act.

The district director denied the application for adjustment of status after determining that the applicant was still maintaining A-2 nonimmigrant status at the time he submitted his application for adjustment of status. *Director's Decision*, dated June 1, 1998. The application was denied accordingly.

On motion, counsel contends that the applicant was not maintaining A-2 nonimmigrant status on the date he filed his application for adjustment of status. *See Brief in Support of Motion*, dated March 26, 1999.

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.

(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.

Pursuant to 8 C.F.R. § 245.3, eligibility for adjustment of status under section 13 of the 1957 Act 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 which 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 statute requires that a section 13 applicant must have failed to maintain his or her status under the specified A or G nonimmigrant class at the time of filing for adjustment of status. An A or G visa holder is lawfully admitted

to the United States and is deemed to be maintaining lawful status so long as the Secretary of State recognizes him or her as being entitled to such status. Termination of recognition of an A or G visa holder's status is committed to the discretion of the Department of State. *See* 22 C.F.R. § 41.22(f). In making a determination of statutory eligibility, Citizenship and Immigration Services (CIS) is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The record indicates that the applicant last entered the United States in New York on October 23, 1990, as an A-2 nonimmigrant official and employee of the Embassy of Pakistan in New York.

Counsel asserts that the A-2 status of the applicant was terminated on November 15, 1990 as evidenced by Department of State Form DS-394A, Notice of Termination of Employment with a Foreign Government. *Brief in Support of Motion*, at 2. The Form DS-394A, which is the form on which the consulate informed the Department of State of the termination of employment, is dated May 15, 1991. *Form DS-394A*. The AAO notes, however, that the record includes Form I-88, also dated May 15, 1991, in which the Department of State officially takes the position that the applicant was still employed by the consulate as an Accountant, Acting Principal in A-2 status as of May 15, 1991. Therefore, the Department of State considered the applicant to be in lawful A-2 nonimmigrant status at the time he filed his application for adjustment of status. As noted above, an individual is considered to be maintaining A visa status until the Department of State determines they are not. Therefore, while his employment may have ended prior to submission of his application, he was still technically in valid status.

Counsel also asserts that the A-2 status of the applicant was terminated on November 15, 1990 as evidenced by a list of administrative, technical and service employees working at the Pakistani consulate on July 6, 1991. *Brief in Support of Motion*, at 3. The AAO finds this evidence unpersuasive as it only evidences that the applicant ceased employment with the consulate sometime before July 6, 1991.

The AAO also notes that the record includes a letter detailing the applicant's duties while employed at the consulate and there is no mention of accounting duties. *Letter from Consulate General of Pakistan*, dated November 15, 1990. The letter indicates that the applicant engaged in activities that may be considered diplomatic in nature. However, they contradict the official title submitted to the Department of State, which was Accountant, a category that would not be eligible for consideration under Section 13.

As the applicant has not established that he failed to maintain A-2 status at the time of filing for adjustment of status, the remaining requirements of Section 13 of the Act of September 11, 1957 will not be addressed.

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 failed to meet that burden. Accordingly, the previous decisions of the district director and the AAO will be affirmed.

**ORDER:** The previous decisions of the district director and the AAO are affirmed.