U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

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PUBLIC COPY

U.S. Citizenship and Immigration Services

A3

[redacted]

FILE: [redacted] Office: WASHINGTON DISTRICT Date: JUL 23 2007

IN RE: Petitioner: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District 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 Pakistan who is seeking to adjust his status to that of a lawful permanent resident under section 13 of the Immigration and Nationality Act of 1957 (the 1957 Act), Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Immigration and Nationality Act.

The district director denied the application for adjustment of status after determining that the applicant had failed to demonstrate he was responsible for performing diplomatic or semi-diplomatic duties, that there were compelling reasons he was unable to return to Pakistan or that his adjustment would be in U.S. national interests.

On appeal, counsel contends that the district director's denial of the application was incorrect and that the applicant presented sufficient evidence to establish that he is unable to return to Pakistan and that his adjustment would be in the national interest.

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 [now Secretary 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 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.

Based on its review of the record on appeal, the AAO concludes that the applicant has failed to establish either that he is eligible for adjustment consideration under section 13 of the 1957 Act or that there are compelling reasons that preclude his return to Pakistan. On April 18, 2001, the Chief of the Diplomatic Liaison Division in the Visa Office at the Department of State certified, on Form I-88, the applicant's employment from July 3, 1994 until March 12, 1999 as a duplicating machine operator on the Embassy of Pakistan's administrative and technical staff. Therefore, although the applicant was admitted to the United States under section 101(a)(15)(A)(ii) of the Act, he did not perform the diplomatic or semi-diplomatic duties required by the regulation at 8 C.F.R. § 245.3 for adjustment under section 13(a) of the 1957 Act. The applicant has also failed to demonstrate that there are compelling reasons why he is unable to return to Pakistan. In a March 13, 2002 sworn statement, the applicant maintained that he was unable to return to his home country because he has no way to support himself there. The applicant's concern about the lack of employment opportunities available to him at home does not, however, constitute a compelling reason that prevents his return and the AAO finds the record to offer no other basis on which to determine that he is unable to return to Pakistan. The AAO notes that at the time of his adjustment interview on March 15, 2001, the applicant specifically stated that he did not fear persecution if he returned to Pakistan. Although counsel on appeal asserts that the applicant has submitted sufficient evidence to establish that he is unable to return to Pakistan, the record offers no documentary evidence to support counsel's claim. Without supporting documentary evidence, the assertions of counsel will not meet the applicant's burden of proof in this proceeding. The 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).

With regard to the second prong of section 13(b) of the 1957 Act – the adjustment of the alien would serve the national interest – the AAO finds no evidence that the applicant's adjustment would benefit U.S. interests. In his March 13, 2002 statement, the applicant contends that his adjustment would be in the national interest of the United States because he would be contributing to the diversity of the country, would not rely on social welfare programs, is law-abiding, and pays local, state and federal taxes that contribute to U.S. revenue. In conclusion, the applicant asserts that he is a healthy, hard working man, which the United States needs. While the AAO notes the applicant's claims regarding the positive results of his adjustment for the United States, it does not find that the advantages identified by the applicant, individually or cumulatively, constitute the type of benefit to U.S. interests envisaged by section 13(b) of the 1957 Act.

The AAO also notes that the applicant's April 26, 1999 A-2 admission into the United States under section 101(a)(15)(A)(ii) of the Act occurred subsequent to the termination of his A-2 employment with the Government of Pakistan. Accordingly, his use of an A-2 visa to enter the United States more than a month after he no longer held such status makes him inadmissible to the United States under section 212(a)(6)(C)(i) of the Act as an "alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States." This inadmissibility renders him ineligible for a section 13 adjustment as 13(b) of the 1957 Act requires that applicants be "admissible for permanent residence under the Immigration and Nationality Act."

For the reasons already discussed, the AAO finds that the records fail to establish that the applicant is eligible for adjustment of status under section 13 of the 1957 Act. It does not establish that he performed diplomatic or semi-diplomatic duties while in A-2 status, has compelling reasons preventing his return to Pakistan or that his

adjustment would benefit U.S. national interests. Moreover, the applicant's entry into the United States using his A-2 visa at a time when he no longer had such status makes him inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act. Accordingly, the appeal will be dismissed.

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.

ORDER: The appeal is dismissed.