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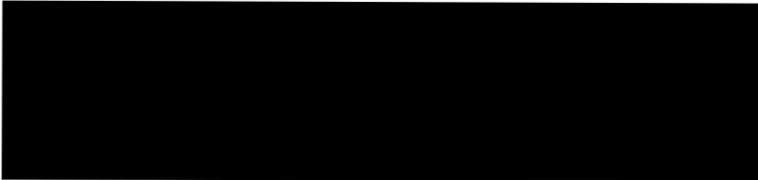


FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: **AUG 08 2008**

IN RE: Applicant: [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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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 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 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 failed to demonstrate that he performed diplomatic or semi-diplomatic duties, that compelling reasons prevent his return to Pakistan, or that his adjustment would be in the national interest. *Field Office Director's Decision*, dated May 6, 2008.

On appeal, counsel summarizes the applicant's duties as an accountant at the Pakistan Mission to the United Nations and asserts that these duties were semi-diplomatic in nature. Counsel also contends that the field office director failed to appreciate the conditions in the applicant's native village of Kohat, Pakistan. Counsel states that Kohat is "the battleground for constant war between the Taliban terrorists and the Pakistan paramilitary forces to gain control of the region," as shown by articles and reports submitted by the applicant. Counsel asserts that the evidence shows that the applicant and his family will be at risk of harm by the Taliban because of their connection to the government of Pakistan and their long residence in the United States. Counsel states that the applicant is also afraid that his children will be the victims of kidnapping by the Taliban or others. Counsel observes that the circumstances in Pakistan are not conducive for the fulfillment of the applicant's dream to give his children a better life, particularly regarding education.

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 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).

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).

A review of the record shows that the applicant was admitted in G-1 status on May 30, 2002 and served as an accountant at the Pakistan Mission to the United Nations until August 21, 2006. *See Letter of [REDACTED] Head of Chancery, Pakistan Mission to the United Nations*, dated January 22, 2007; *Sworn Statement of [REDACTED]* dated August 3, 2005; *Form I-94*.

Although the record shows that the applicant was admitted under section 101(a)(15)(G)(i) of the Act, it does not show that the applicant performed diplomatic or semi-diplomatic duties. Rather, the applicant served as an accountant, and the record reflects that his duties were clerical. The terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. The essential role of a diplomat is the representation of a country in its relations with other countries. *See American Heritage Dictionary of the English Language, 4th Edition, 2000* (Diplomat: One, such as an ambassador, who has been appointed to represent a government in its relations with other governments); *Black's Law Dictionary, 8th Edition, 2004* (Diplomacy: The art and practice of conducting negotiations between national governments). The AAO acknowledges that diplomatic representation may encompass many duties and that the determination of whether an accredited official of a foreign government performed diplomatic or semi-diplomatic duties is a case-by-case determination. Furthermore, the inclusion of the term semi-diplomatic in 8 C.F.R. § 245.3 indicates that those who did not engage in overt negotiation or representation, but who performed duties in direct support of such activities, may also be considered for adjustment of status under Section 13 unless their duties were merely custodial, clerical or menial.

On appeal, counsel asserts that the applicant's duties included the following:

[B]eing in charge of preparing all important financial statements and reports in the Mission; preparing and custodian of all important confidential financial documents of the Mission; was responsible for issuance of checks & all financial transactions under the High Commissioner; budget preparation; in charge of submission of all financial reports to the Government of Pakistan; responsible for the disbursement and keeping records of all expenditure relating to all the diplomatic and non-diplomatic events organized by the Mission; and coordinating with the Treasury department of the Government of Pakistan for allocation of funds.

However, this list of specific duties appears nowhere else in the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant'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). Regardless, counsel has described duties that are clerical in nature. The AAO concludes, therefore, that the applicant's duties as an accountant were clerical, and not semi-diplomatic or diplomatic. Consequently, the applicant is not eligible for benefits under Section 13.

The AAO also concurs with the field office director's determination that the applicant has failed to establish compelling reasons that prevent his return to Pakistan. As discussed 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. 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.

The AAO also observes that Section 13 provides that the applicant must have compelling reasons preventing his or her return to the country represented by the government that accredited the applicant, not to a particular region within that country. The applicant has submitted evidence showing conflict between the Pakistan government

and Taliban militants in what he claims to be his home village of Kohat. However, there is no evidence in the record showing that the applicant, who has resided outside of Pakistan for many years, would be compelled to, or even face some hardship if he did not, live in his home village upon return to Pakistan. There is no evidence that the government of Pakistan will not allow the applicant to return to Pakistan or of a direct threat against the applicant and his family. The applicant's desire that his children have the educational opportunities available in the United States is not a compelling reason under Section 13. The general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The AAO therefore concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to the Pakistan.

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 he performed diplomatic or semi-diplomatic duties or that there are compelling reasons preventing 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 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.