



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: JAN 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.

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 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)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

The district director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent his return to Pakistan or that his adjustment would serve the national interest. *Decision of District Director* dated April 3, 2001.

On appeal, the applicant's former counsel<sup>1</sup> states that the applicant, a long-time resident of the United States, submitted substantial evidence at his interview to support the application and requests that the decision of the district director be set aside. *See Brief of Counsel*, dated June 12, 2001.

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.

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

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<sup>1</sup> The applicant's former counsel, [REDACTED], was suspended from practice before the Department of Homeland Security on September 16, 2005, subsequent to the filing of the appeal. His representations will be considered, but the decision will be issued to the applicant and his present counsel.

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 establishes the applicant's eligibility for consideration under Section 13. The applicant was initially admitted in A-2 status on September 3, 1993 and served thereafter as Personal Assistant to Stenographer at the Embassy of Pakistan until the status was terminated on September 3, 1993. *Letter from [REDACTED], Chief of Diplomatic Liaison Division, Visa Office, Department of State*, dated March 26, 2001. The AAO notes that the applicant continued using his visa even after his status was terminated, and was again admitted to the United States in A-2 status on December 15, 1996 and on January 4, 1998.

Although the record shows that the applicant was admitted under section 101(a)(15)(A)(ii) of the Act, it does not show that the applicant performed diplomatic or semi-diplomatic duties. As stated above, the State Department has reported that the applicant held the position of Personal Assistant to Stenographer. In a sworn statement taken at his interview on February 27, 2001, the applicant indicated that he served as the Personal Assistant to the Education Counselor, and that his duties included "taking dictation and typing and student affairs." The AAO concludes that the applicant's position was clerical in nature, and not diplomatic or semi-diplomatic. Consequently, the applicant is not eligible for benefits under Section 13.

The AAO also determined that the applicant has failed to establish compelling reasons that prevent his return to Pakistan or that his adjustment will serve U.S. national interests.

In a sworn statement taken at an interview on February 27, 2001, the applicant stated that he was afraid of persecution in Pakistan but did not elaborate. He also stated that he had returned to Pakistan three times since his position was terminated in October 1996. The State Department has objected to the applicant being granted adjustment of status on the basis that it does not believe that the applicant has a well-founded fear of persecution in Pakistan. See *Letter from [REDACTED], dated March 26, 2001 and Memorandum of [REDACTED] Pakistan Desk Officer, Department of State*, dated March 15, 2001.

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. The general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13.

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 the Pakistan. The applicant has indicated that he fears persecution in Pakistan, but there is no evidence in the record supporting this claim. Likewise, the applicant has not submitted evidence beyond stating that he is employed in the United States showing his adjustment of status would be in the national interest. Although the statements by the applicant are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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)).

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 there are compelling reasons preventing his return to Pakistan or that his adjustment of status would be in the national interest. 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.