

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

A3



FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: JUL 15 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 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)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

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. *Decision of Field Office Director*, dated February 12, 2008.

On appeal, counsel contends that the director erred in relying on the Black’s Law Dictionary definition of diplomacy in finding that the applicant did not perform diplomatic or semi-diplomatic duties. *Section 13 Appeal, Attachment to I-290* at 2. As evidence that the applicant performed diplomatic or semi-diplomatic duties, counsel submits a letter from the [REDACTED] Executive Officer at the Embassy of Pakistan in Washington, D.C., in which Mr. [REDACTED] states that the applicant “mostly served in the Press & Information Section and his duties included dealing with press & publicity matters and educational & cultural matters.” Counsel also asserts that the director ignored the evidence of compelling reasons submitted by the applicant. *Id.* at 3. Counsel contends that AAO is required to acknowledge the clear and unambiguous dictionary definition of “compelling” in determining if the applicant has compelling reasons that prevent his return to Pakistan. *Counsel’s Brief* of June 24, 2008 at 4. Counsel asserts that it is axiomatic in statutory construction that an adjudicator must in the first instance examine the language in which a statute is framed before looking to legislative history and other sources. *Id.* at 5-6. Accordingly, counsel asserts that compelling reasons are those that are irresistibly or keenly interesting, attractive, urgently requiring attention, or drivingly forceful. *Id.* Counsel states that the applicant’s reasons for staying in the United States—his employment; friendships; educational, professional and social opportunities for his children; healthcare for his asthmatic daughter; etc.—meet the standard dictionary definitions of compelling. *Id.*

Counsel contends that the applicant’s children have been raised in the United States, and have no knowledge of Pakistan. *Section 13 Appeal, Attachment to I-290* at 3. Counsel indicates that the applicant cannot afford to send his children to English-speaking schools in Pakistan, and that they will experience detriment there as a consequence. *Id.* Counsel also asserts that the applicant’s youngest child suffers from asthma, and that the medicine she needs is “not routinely or reliably available in Pakistan.” *Id.* Counsel indicates that additional evidence will be submitted on the question of whether adjustment would be in the national interest, but states that in the absence of a criminal record, it is in the national interest of the U.S. government to allow the applicant’s U.S. citizen children to grow up in the country of their birth. *Id.* at 4.

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 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 last admitted in A-2 status on or about March 26, 2000 and served as an "Assistant" in the Press and Information Section at the Embassy of Pakistan in Washington, D.C., until his section was closed on or around September 30, 2000. See *Sworn Statement of [REDACTED]* dated May 23, 2006; *Letter from [REDACTED], Executive Officer, Embassy of Pakistan, Washington, D.C., dated February 28, 2008.*

The record shows that the applicant was admitted under section 101(a)(15)(A)(ii) of the Act, and that the applicant performed semi-diplomatic duties. As discussed above, [REDACTED] stated in his letter that the applicant “mostly served in the Press & Information Section and his duties included dealing with press & publicity matters and educational & cultural matters.” In his sworn statement, the applicant asserted that his duties included “[f]iling papers, mail publications and information about Pakistan.” The AAO finds that the applicant’s duties, in particular his service as a liaison to the media, were semi-diplomatic in nature. Accordingly, the determination by the field officer director that the applicant did not perform diplomatic or semi-diplomatic duties is withdrawn.

However, the AAO concurs with the field office director’s determination that the applicant has failed to establish compelling reasons that prevent his return to Pakistan. The applicant’s stated reasons for not returning to Pakistan are not compelling reasons under Section 13. 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.

Counsel has asserted that the meaning of the term “compelling” is unambiguous and the AAO is required to apply the standard dictionary definition of the term in determining if the applicant’s reasons for not returning to Pakistan are compelling. The AAO disagrees. 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, a dictionary cited by counsel for the meaning of the term “compelling,” the plain meaning of the term “unable” is “lacking the necessary power, authority, or means.” 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 keenly 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.

Furthermore, 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 acknowledges the evidence of hardship to the applicant and his children if they return to Pakistan. However, the general inconveniences and hardships associated with relocating to another country are not compelling reasons 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 Pakistan. *See* Interagency Record of Request (Form I-566). 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 Pakistan. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Pakistan, the question of whether adjustment of status would be in the national interest need not be addressed.

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. 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.