

PUBLIC COPY

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



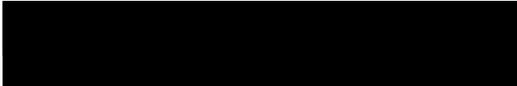
U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



A3

FILE:  Office: WASHINGTON DISTRICT Date: **JUL 23 2008**

IN RE: Applicant: 

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 November 2, 2007.

On appeal, counsel contends that the director erred in finding that the applicant's duties were not semi-diplomatic in nature. *Appellee's Brief* at 3. Counsel asserts that the applicant, as a diplomatic courier, was entrusted with the delivery of confidential documents, a function in which he enjoyed diplomatic immunity pursuant to Article 27, Section 5 of the U.N. Convention on Diplomatic Relations. *Id.* at 3-4. Counsel contends that the applicant has also demonstrated the compelling reasons prevent his return to Pakistan, in particular by evidence showing that the applicant's home in Kashmir was destroyed by an earthquake in October 8, 2005. *Id.* at 5. Counsel states that "[w]ith no home to return to, no infrastructure for help, and no city in which to find employment, [the applicant] is compelled to stay in the United States where he can work and provide for his family. *Id.* at 4. Counsel also asserts that the applicant feels compelled to remain in the United States because of the threat of terrorism in Pakistan. *Id.* at 4. Counsel contends that the applicant's adjustment would serve the national interest because the applicant is a hard-working, law-abiding individual with cooking skills that is also maintaining employment as a newspaper vendor. *Id.* at 5.

The record contains, among other documents, a letter from the Deputy Commissioner of District Bagh Azad Kashmir stating that the applicant has received compensation for the damage to his house caused by the earthquake of October 8, 2005, reports concerning the October 8, 2005 earthquake and disaster relief efforts, a U.S. State Department Travel Warning for Pakistan dated November 29, 2007, and photographs purportedly of the damage of the applicant's house in Pakistan. The entire record has been reviewed in rendering a decision on the appeal.

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 admitted in A-2 status on September 12, 2002 and served as a diplomatic courier at the Embassy of Pakistan in Washington, D.C. until July 2006. *See Sworn Statement of* [REDACTED] dated November 21, 2007; *Letter from* [REDACTED] *Finance & Accounts Officer, Embassy of Pakistan, Washington, D.C., dated November 21, 2007.*

The record shows that the applicant was admitted under section 101(a)(15)(A)(ii) of the Act, but the field office director found that the applicant did not perform duties of a diplomatic or semi-diplomatic nature. The AAO does not concur. 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* (Diplomacy: The art and practice of conducting negotiations between national governments). Preserving as confidential a government's secrets is an essential component of diplomatic

representation. The evidence demonstrates that the applicant was entrusted with confidential or secret documents. Although the duties of a courier might be considered menial generally, the fact that the applicant was entrusted with carrying confidential or secret documents is sufficient to show that the applicant's duties in this case 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.

Nevertheless, 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. 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, the plain meaning of the term "unable" is "lacking the necessary power, authority, or means." Thus, 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.

Counsel contends that the applicant has been left homeless as the consequence of an earthquake in Kashmir that destroyed his home and much of the surrounding infrastructure, and that this constitutes a compelling reason preventing his return. The AAO acknowledges the evidence of this destruction, but finds that "homelessness" caused by natural disasters is not, in and of itself, a compelling reason under Section 13. The evidence submitted by the applicant shows that the government of Pakistan, as well as other governments and international relief organizations, have assisted the applicant and his neighbors in rebuilding their homes and their community in the aftermath of the 2005 earthquake. Although the applicant may experience hardship if he returns to Pakistan, the evidence does not show that he is unable to do so because of any action or inaction on the part of the government of Pakistan or other political entity there. Likewise, the general threat of terrorism is not a sufficiently compelling

reason under Section 13. The AAO notes that the applicant has not submitted evidence showing that he is at greater risk of harm because of his past government employment, political activities or other related reason. 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.