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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

Office: WASHINGTON DISTRICT

Date:

JUL 23 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:

[REDACTED]

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. *Field Office Director's Decision*, dated February 12, 2008.

The district director also issued separate decisions denying the adjustment applications of the applicant's wife, [REDACTED] and children, [REDACTED], and [REDACTED]. In the Form I-290B Notice of Appeal filed on behalf of the applicant, counsel states that he is also appealing the denials of the applications of the applicant's family members. However, no Form I-290B notices, with accompanying fees, have been filed on behalf of the applicant's spouse or children as required. Consequently, the only matter before the AAO is the denial of the applicant's adjustment application.

On appeal, counsel contends that applicant performed diplomatic and/or semi-diplomatic duties and that the field officer director erred in relying on a narrow, and perhaps misquoted, definition of the word diplomacy from Black's Law Dictionary in determining that the applicant's duties were not diplomatic. *Brief in Support of Respondents' Appeal* at 2-3. Counsel also observes that the decision does not specifically discuss whether the applicant's duties, if not diplomatic, were semi-diplomatic as provided for in 8 C.F.R. § 245.3. *Id.* Counsel asserts that the applicant's responsibilities were consistent with those of a diplomat, and were at least semi-diplomatic in nature, as the applicant was responsible for negotiating and procuring military hardware and other equipment from the United States for Pakistan, initiating trips of many army personnel to the United States for training or academic refresher course, and initiating and arranging trips of U.S. Army personnel to Pakistan's army colleges. *Id.* at 5-6.

Counsel contends that the applicant has demonstrated that compelling reasons prevent his return to Pakistan through his testimony that "Army personnel and their family members are targeted by Al Qaeda, religious fanatics and other criminals." *Brief in Support of Respondents' Appeal* at 13. Counsel asserts that the applicant knows "that his family members will be especially prone to harassment and even kidnapping by terrorists for ransom and/or rape." *Id.* Counsel states that the applicant's adjustment of status is in the national interest because the applicant has knowledge about the Pakistan Army and the "various harmful elements operating from Pakistan," and "can contribute a lot to the safety and well being of the United States by providing necessary information." *Id.* at 6-7. Counsel adds that the applicant's spouse and children are law-abiding individuals whose numerous awards and accomplishments demonstrate that adjustment of status is in the national interest. *Id.* at 7-

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 February 3, 2002 and served thereafter as a "clerk" to the Defense and Army

Attaché at the Embassy of Pakistan in Washington, D.C. until completion of his temporary duty on or around February 14, 2004. See *Sworn Statement of Muhammad Tanvir*, dated August 3, 2005; *Form G-325A*.

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. The terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. However, 8 C.F.R. § 245.3 does provide that those duties of a custodial, clerical, or menial nature are not to be considered diplomatic or semi-diplomatic. 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 inclusion of the term semi-diplomatic in 8 C.F.R. § 245.3 indicates that those not engaged in overt negotiation or representation, but who perform duties in direct support of such activities, may also be considered for adjustment of status under Section 13 unless their duties are merely custodial, clerical or menial.

As stated above, the applicant has stated that he held a clerical position. In an affidavit submitted on appeal, the applicant states that he was responsible for negotiating and procuring military hardware and other equipment from the United States for the Pakistan Army, for initiating trips of army personnel to the United States for training or academic refresher course, and for initiating and arranging trips of U.S. Army personnel to Pakistan's army colleges. However, the applicant did not mention these or any similar responsibilities in the description of duties he provided under oath at his interview on August 3, 2005. He stated only "I have clerical work in the office" and added that his duties consisted of "[o]ffice routine work." In response to the question if his duties were considered diplomatic or semi-diplomatic in nature, the applicant responded that "[t]hey were staff duties helping the Defense and Army attaché." The AAO notes that the applicant has submitted no other evidence to substantiate the description of his duties provided in his affidavit on appeal. The AAO concludes, therefore, that the evidence shows that the applicant's duties were clerical and menial in nature, and not diplomatic or semi-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. The applicant's assertion that he and his family will be targeted by terrorists or criminals in Pakistan because of his former army affiliation is not supported by any other evidence in the record. 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)). There is no evidence in the record showing that the government of Pakistan will not allow the applicant to return to the country or that political conditions in Pakistan render the applicant essentially "stateless" as required for adjustment of status under Section 13.

The applicant's other stated reason for not returning to Pakistan—the education of his daughter—is not a compelling reasons under Section 13. 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. 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. As stated 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 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.