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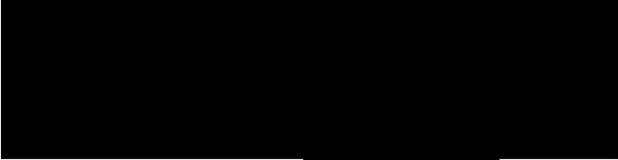
U.S. Department of Homeland Security
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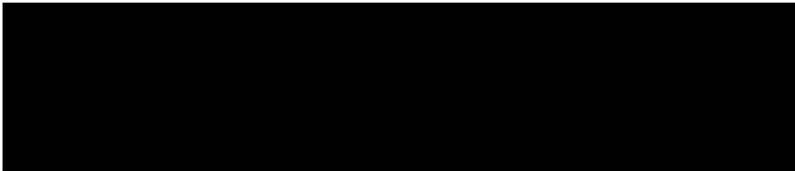


FILE: [Redacted] Office: WASHINGTON DISTRICT Date: JUN 10 2008

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)(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 compelling reasons prevent his return to Pakistan. *Decision of Field Office Director*, dated February 14, 2008.

On appeal, counsel contends that the denial is based on legal error. *Brief in Support of Appeal* at 3. Counsel asserts that the applicant has demonstrated that it would be "extreme hardship" for him to return to Pakistan after his wife and children have been acculturated to life and education in the United States. *Id.* at 5. Counsel contends the applicant's daughters would be forced to abide by the "strict Islamic Sharia laws of Pakistan that completely restrict and treat women as inferior to men." *Id.* at 6. Counsel also asserts that current country conditions in Pakistan are extremely dangerous and violent, with militant extremism at its zenith. *Id.*

Counsel asserts that the regulation controlling adjustment of status under Section 13 is 8 C.F.R. § 245.3, and that this regulation does not require the termination of diplomatic status before the filing of an application for adjustment under Section 13. *Id.* at 4. Counsel contends that the only additional requirement for aliens maintaining diplomatic status to adjust to permanent resident status is imposed by the regulations at 8 C.F.R. §§ 247.11 and 247.12, which mandate the execution of "a written waiver of all rights, privileges, exemptions, and immunities under any law or any executive order..." *Id.* at 4. Counsel asserts that to require an applicant for adjustment of status under Section 13 to not be maintaining diplomatic status at the time of filing is not "sound policy" as it contradicts Section 245(c) of the Act, which prohibits adjustment of status to those who are in unlawful status on the date the adjustment application is filed. *Id.* at 4,7. Counsel contends that imposing such a requirement transforms what was intended to be a special benefit for diplomats to a special penalty, and amounts to an abuse of discretion by USCIS. *Id.* at 8.

Counsel also asserts that the field office director failed to provide a reasoned explanation for the denial as required by law. Finally, counsel reiterates that Pakistan is a country in turmoil, and that conditions there constitute compelling reasons preventing the applicant from returning. *Id.* at 9-10.

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 February 4, 1996 and served thereafter as a "personal assistant" at the Consulate General of Pakistan in Los Angeles, California, until he was relieved of his duties on or around March 6, 2000. See *Sworn Statement of [REDACTED]*; *Letter from [REDACTED], Commercial Counsellor, Consulate General of Pakistan, Trade Division, Los Angeles, California, dated August 16, 2005.*

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 applicant held the position of personal assistant. In his letter, [REDACTED] indicates that the applicant's duties consisted of "accounting work, preparing budget, commercial/office correspondence, maintenance/handling of files,

administrative work” In his sworn statement, the applicant indicates that his duties included “office correspondence, maintenance of official record . . . appointment/travel arrangement for commercial counselor . . . preparation of budget.” The AAO concludes 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. The AAO acknowledges the evidence showing the existence of political violence, and of discrimination and violence against women, in Pakistan, but the applicant has failed to demonstrate by a preponderance of the evidence that he and his family will be targeted for violence in Pakistan or that conditions in that country constitute political upheaval that renders the applicant essentially “stateless” as required for adjustment of status under Section 13.

The applicant’s other 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. 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.

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.