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U.S. Citizenship  
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[Redacted]

FILE: [Redacted] Office: WASHINGTON DISTRICT Date: **MAY 29 2008**

IN RE: Applicant: [Redacted]

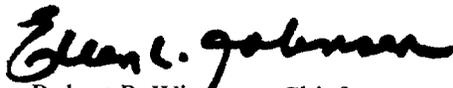
APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

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 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. *Decision of District Director*, dated October 25, 2007.

On appeal, counsel states that the district director erred in characterizing the applicant's reasons for not returning to Pakistan as mere inconvenience. *Brief of Counsel*, dated November 12, 2002. Counsel asserts that the applicant was fired from his position at the Embassy of Pakistan because his superiors abused their positions and requested that he perform work at their homes. *Id.* Counsel contends that Pakistan has no laws or resources to protect "whistle blowers" like the applicant, and that he and his family will "face retaliation, harassment, and likely torture" if the applicant returns to Pakistan and makes public that Embassy officials were using government resources for personal reasons. *Id.* Counsel also observes that the applicant's firing will prevent him from ever acquiring a job in Pakistan. *Id.* Counsel states that individuals not supporting the government of Pakistan are harassed, jailed and tortured. Finally, counsel points out that the applicant and his family pay taxes, obey the law, and have assimilated in the United States such that returning to Pakistan would deprive the applicant's children of educational opportunities and the secure lives to which they are accustomed. *Id.*

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 March 16, 2003 and served thereafter as a "Duplicating Machine Operator" at the Embassy of Pakistan until his employment was terminated on or around August 16, 2005. *See Sworn Statement of [REDACTED]*, dated June 29, 2006; *Letter from [REDACTED]*, *Second Secretary, Embassy of Pakistan, Washington, D.C.*, 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 duplicating machine operator. In his sworn statement dated June 29, 2006, the applicant indicated that his duties included operating the photocopy machine, sending faxes, and handling incoming and outgoing mail. 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 district director's determination that the applicant has failed to establish compelling reasons that prevent his return to Pakistan. The applicant has failed to provide sufficient evidence demonstrating that he will "face retaliation, harassment, and likely torture" as claimed if he returns to Pakistan. Counsel has claimed that the applicant is a "whistleblower" who was fired for his refusal to perform work at the homes of embassy officials at their request because to do so would have constituted the inappropriate use of government resources for personal reasons. However, the applicant has not divulged the precise nature of the tasks he declined to perform, or demonstrated that the requests amounted to an abuse of authority by embassy officials. Furthermore, the applicant has not indicated that he has publicized the alleged abuse or intends to do so on his return to Pakistan. Going on record without supporting documentary evidence is not sufficient to meet the

