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U.S. Citizenship
and Immigration
Services

A3

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FILE:



Office: WASHINGTON DISTRICT

Date: **SEP 17 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.

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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

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 May 4, 2008.

In a brief submitted on appeal, counsel contends that the applicant's duties, while perhaps not "diplomatic" as that term is defined in the field office director's decision, supported diplomatic duties and were thus semi-diplomatic. Counsel asserts that under the regulation at 8 C.F.R. § 1102, all non-immigrants admitted under sections 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Act are entitled to "diplomatic and semi-diplomatic immunity," which indicates a congressional intent to categorize the duties of all such individuals as diplomatic or semi-diplomatic. Counsel also asserts that the applicant has demonstrated compelling reasons that prevent his return to Pakistan, namely, that his children are culturally assimilated in the United States and that he fears harm from anti-American groups in Pakistan as a consequence of his years living in the United States and his employment by the Pakistan government. Counsel contends that the adjustment of status of the applicant and his family is in the national interest as demonstrated by their employment and educational pursuits and by their lack of a criminal record.

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 shows that the applicant was admitted in G-1 status on January 22, 2006 and served as a "stenotypist" at the Pakistan Mission to the United Nations until July 14, 2006. See *Letter of [REDACTED] Head of Chancery, Pakistan Mission to the United Nations*, dated July 14, 2006; *Sworn Statement of [REDACTED]* dated March 12, 2007; *Form I-94*. The applicant applied for adjustment of status on August 8, 2006.

Although the record shows that the applicant was admitted under section 101(a)(15)(G)(i) of the Act and no longer maintaining that status at the time he filed for adjustment of status, the field office director found that the applicant's duties as a stenotypist were not diplomatic or semi-diplomatic. The terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. The AAO acknowledges that the standard definitions of terms such as diplomat, diplomatic and diplomacy are varied and broad, and that, in practice, diplomacy may encompass many responsibilities and duties. 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 who did not engage in overt negotiation or representation, but who performed duties in direct support of such activities, may also be considered for adjustment of status under Section 13 unless their duties were merely custodial, clerical or menial.

In his sworn statement taken on March 12, 2007, the applicant testified that his duties included "file work . . . typing letters, sometimes attending meetings in the United Nations, making record of the meetings . . . [a]nd

engagement writing of my official. . . .” In an affidavit dated June 11, 2008 and submitted on appeal, the applicant further states:

I was on the Second committee of the Mission dealing with economic issues. I attended meetings involving trade negotiations and took minutes. I helped to draft resolutions for the General Assembly under the supervision of the consular. I helped to draft trade resolutions for discussion with the Group of 77. I prepared statements to be delivered to the United Nations General Assembly on trade and other economic issues.

Although the title “stenotypist” suggests that the applicant performed only clerical work, there is sufficient evidence in the record to show that the applicant also assisted in the drafting of, rather than merely typing or transcribing, diplomatic documents, and that such duties were semi-diplomatic. Therefore, the field office director’s finding 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 render him and his family unable to 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. 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. 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.

The applicant has asserted that he may be harmed by anti-American groups in Pakistan, but he has submitted no additional evidence to demonstrate a specific threat against him and his family. 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 that the government of Pakistan will not allow the applicant and his family to return to Pakistan. The cultural assimilation of the applicant's children in the United States and the applicant's desire that his children have the educational and other opportunities available in the United States are not a compelling reason under Section 13. The general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The AAO acknowledges the evidence showing that the applicant and his family members have been employed, attended school, paid taxes, and obeyed the law in the United States, but concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent him and his family from returning 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 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.