

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



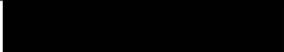
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

A3



FILE:



Office: WASHINGTON DISTRICT

Date: **FEB 11 2009**

IN RE:



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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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. The field office director also noted that the Department of State issued its opinion on August 28, 2008 advising that it could not favorably recommend the matter as the reasons for remaining in the United States are not compelling. *Decision of Field Office Director*, dated September 18, 2008.

On appeal, the applicant states that the reason for his inability to return to Pakistan is for education purposes. The applicant also notes that the conditions in Pakistan are deteriorating and that many tragic incidents involving loss of life and property have been widely reported.

The applicant provided a personal statement appended to the Form I-485, Application to Register Permanent Residence or Adjust Status, and a sworn statement made before a district adjudications officer on February 27, 2008.

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 [Department of Homeland Security] 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 [Department of Homeland Security] 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 [Department of Homeland Security], in its discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the [Department of Homeland Security] approving the application for adjustment of status is made. 8 U.S.C. § 1255b(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).

The AAO concurs with the field office director's determination that the applicant failed to establish compelling reasons that prevent his return to Pakistan. As referenced 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.

In this matter, the applicant has provided the following information regarding his employment and subsequent termination of employment with the government of Pakistan. The applicant in his February 27, 2008 sworn statement indicated he was transferred to the Embassy of Pakistan as an Assistant to the Finance and Accounts Office in September 2002 on an A-2 visa and that his term of employment ended in December 2006. The record includes a letter from the Finance and Accounts Officer, [REDACTED] dated February 15, 2007 certifying that the applicant worked in the Embassy of Pakistan from September 19, 2002 to December 16, 2006 as Assistant to Finance and Accounts Officer.

In the applicant's statement, appended to the application, the applicant indicated that he planned to pursue studies in the United States and that is the reason he needed to stay and work in the United States. In the applicant's February 27, 2008 sworn statement, the applicant reiterated his wish to pursue his education in the United States. The applicant, when asked what compelling reasons prevented his return to Pakistan, noted that the situation in Pakistan is not stable and "life there is not stable with turmoil and violence." On appeal, as referenced above, the applicant indicates that the reason for his inability to return to Pakistan is for education purposes as well as indicating that the conditions in Pakistan are deteriorating and that many tragic incidents involving loss of life and property have been widely reported.

The applicant's reason for staying in the United States to continue his education is not a compelling reason under Section 13. The applicant has not provided evidence that he is unable to return to Pakistan due to compelling reasons related to political changes in Pakistan 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 in this matter has not submitted such evidence and has not shown that he is at greater risk of harm because of his past government employment, political activities or other related reasons. 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)). The AAO acknowledges the applicant's reference to the instability of Pakistan and the ongoing turmoil and violence; however, the applicant has not shown that he would be a target of violence or would otherwise face harm because of his past government employment.

The general inconveniences and hardships associated with relocating to another country and the desire to pursue an education in the United States 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 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.

Beyond the decision of the director, the AAO does not find that the applicant established eligibility for consideration under Section 13. The applicant was admitted in A-2 status and served as an Assistant to

the Finance and Accounts Officer at the Embassy of Pakistan in Washington, DC. Although the record shows that the applicant was admitted under section 101(a)(15)(A)(ii) of the Act, the record does not include a detailed description of the applicant's duties in the position of Assistant to the Finance and Accounts Officer. Moreover, the applicant, in his February 27, 2008 sworn statement declared that his duties were "secretarial and administrative duties. Stenography." Although the applicant indicated his belief that these duties were semi-diplomatic, the applicant did not explain why or how the duties he performed should be considered semi-diplomatic duties rather than as he stated "clerical duties."

The AAO observes that 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). Both section 101(a)(15)(A) of the Act and the Vienna Convention recognize that certain accredited employees or officials admitted to serve within embassies or other diplomatic missions are not "diplomatic" staff. Whereas ambassadors, public ministers, and career diplomatic or consular officers are admitted under section 101(a)(15)(A)(i) of the Act, those admitted under section 101(a)(15)(A)(ii) such as the applicant are described only as "other officials and employees" accepted on the basis of reciprocity. The Vienna Convention refers to such personnel as administrative and technical staff, service staff, or personal servants. *The Vienna Convention on Diplomatic Relations*, Art. 1 (April 18, 1961), 500 U.N.T.S. 95. The record does not show that the applicant had any formal advisory or decision-making role at the Embassy or that he represented Pakistan before the United States government or any foreign government in any official capacity. The record demonstrates that the applicant worked in the Pakistan Embassy in a clerical capacity and not in a position where he was entrusted with duties of a diplomatic or semi-diplomatic nature. The record does not establish that the applicant performed duties of a diplomatic or semi-diplomatic nature in his position with the Embassy of Pakistan and thus the applicant is ineligible for consideration pursuant to Section 13.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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 was entrusted with duties of a diplomatic or semi-diplomatic nature and 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.