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U.S. Citizenship
and Immigration
Services

43

FILE:

Office: WASHINGTON DISTRICT

Date:

FEB 20 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:

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 he performed diplomatic or semi-diplomatic duties, that compelling reasons prevent his return to Pakistan, and that his adjustment would be in the national interest of the United States. The field office director also noted that the Department of State issued its opinion on February 27, 2008 advising of its recommendation that the applicant's request to adjust status be denied. *Decision of Field Office Director*, dated March 10, 2008.

On appeal, counsel for the applicant asserts that the field office director's decision is in error. Counsel asserts that the applicant worked for the ambassador of Pakistan to the United Nations who was engaged in diplomacy. Counsel asserts that the applicant's duties were supportive of the ambassador and his diplomatic duties. Counsel also references a March 20, 2008 letter written by the Pakistan Mission stating that the applicant's duties were semi-diplomatic. Counsel further asserts that the applicant's children lack skills in their native Urdu to function in Pakistani society and that they have assimilated in the United States; thus the applicant and his family have established compelling reasons that they are unable to return to Pakistan. Counsel also asserts that adjustment of the applicant's status would be in the national best interest.

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 which 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 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 9, 1999, and served as an "assistant" at the Pakistan Mission to the United Nations until January 19, 2002. *See Letter of [REDACTED] Pakistan Mission to the United Nations*, dated March 20, 2008; *Sworn Statement of [REDACTED]*, dated February 27, [2004]. The applicant applied for adjustment of status on February 1, 2002.

Although the record shows that the applicant was admitted under section 101(a)(15)(G)(i) of the Act and no longer maintained that status at the time he filed for adjustment of status, the field office director found that the applicant's duties as an assistant were not diplomatic or semi-diplomatic. The AAO observes that the terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. The AAO also 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 AAO finds, however, 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, 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.

The applicant provided a statement dated January 10, 2002, indicating that he served as "Assistant" in the Mission of Pakistan to the United Nations. In his sworn statement taken on February 27, [2004], the applicant testified that his job was "communications" and his official title was "Additional Assistant."

When asked to provide information regarding his official duties, the applicant's counsel in the interview indicated that he did not have anything so specific describing the applicant's job. The applicant indicated his belief that his duties were semi-diplomatic in his sworn statement. The record also includes the March 20, 2008 letter signed by [REDACTED] Pakistan Mission to the United Nations which indicates that the applicant's duties from January 15, 1999 to January 2002 were semi-diplomatic in nature. On appeal, as noted above, counsel for the applicant asserts that as the applicant's duties were supportive of the ambassador and the ambassador's diplomatic duties, the applicant's duties were semi-diplomatic in nature.

Counsel's assertion that the applicant's duties were supportive of the ambassador and the ambassador's diplomatic duties is not persuasive. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Although the record shows that the applicant was admitted under section 101(a)(15)(G)(i) of the Act, the applicant has failed to provide a description of the duties he performed for the ambassador. The applicant's title and his brief job description as "communication" are insufficient to enable either the field office director or the AAO to determine the extent of his duties and in what capacity the applicant "supported" the ambassador and his diplomatic mission. The record is devoid of information describing the applicant's actual responsibilities and duties. 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 statement provided in the March 20, 2008 letter signed by First Secretary/Head of Chancery, Pakistan Mission to the United Nations that the applicant performed semi-diplomatic duties; however, the AAO does not rely on conclusory statements of third parties, but rather must assess the actual duties and responsibilities and determine whether those duties and responsibilities encompass diplomatic or semi-diplomatic duties. Upon review of the totality of the record in this matter, the applicant has not provided sufficient evidence to establish that his actual duties and responsibilities were diplomatic or semi-diplomatic in nature.

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

In the applicant's January 10, 2002 statement, the applicant indicates that as his children began their study at high school/college in the United States, it is absolutely necessary and imperative that his

family stay together so that his children can achieve their academic objectives. The applicant further declares that his children have been cut off from their native country, Pakistan, for a number of years and that his children are fully assimilated in the United States and would face great hardship and discrimination if returned to Pakistan. The AAO acknowledges the difficulty the applicant's children might have in adjusting to life in Pakistan if returned there. However, this is not a compelling reason under Section 13; rather 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. 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.

Again, the AAO acknowledges the difficulty the applicant and his children might face in regards to education and assimilation if they return to Pakistan. However, 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 evidence of record does not show that the applicant is unable to return because of any action or inaction on the part of the government of Pakistan or other political entity there as required under Section 13. The AAO notes that the applicant has not submitted evidence showing that he is at greater risk of harm because of his past government employment, political activities or other related reason. 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. 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.

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 or she 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.