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**U.S. Citizenship
and Immigration
Services**

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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).

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 May 13, 2008 advising of its recommendation that the applicant's request to adjust status be denied. *Decision of Field Office Director*, dated July 28, 2008.

On appeal,¹ counsel for the applicant states he strongly disagrees with the field office director's decision and references the evidence previously submitted asserting that the applicant's sworn testimony and extensive documentation establish the applicant's eligibility for adjustment of status pursuant to Section 13.

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

¹ The AAO notes that the applicant's spouse and two of his children filed Section 13 adjustment applications, which were also denied. The applicant filed only one Form I-290B, Notice of Appeal, indicating that the appeal also included the applicant's "family riders." Section 13 of the Act refers to "immediate family," not "derivatives" or "dependents." Therefore, to appeal a denial decision, each family member must submit a Form I-290B. As the applicant filed only one Form I-290B for himself and failed to file a Form I-290B for his spouse and his two children, the decisions to deny their applications stand.

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).

Upon review of the record, the AAO concurs with the field office director's determination that the applicant is not eligible for consideration under Section 13. 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 applicant was admitted in A-2 status and served as a stenographer at the Embassy of Pakistan from September 16, 1999 to November 2002. *See sworn statement of* [REDACTED] dated December 19, 2006. The applicant declared in his sworn statement that he performed the duties of a personal assistant to the Minister/Counselor. The record also includes a September 16, 1999 letter from the United States Department of State acknowledging receipt of the proper forms from the Pakistani Embassy, requesting that the applicant be accepted into the position of stenographer as a member of the administrative and technical staff in the Pakistani Embassy. The record does not include a more detailed description of the applicant's specific duties.

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.

Although the record shows that the applicant was admitted under section 101(a)(15)(A)(ii) of the Act, the field office director determined that the applicant did not perform duties of a diplomatic or semi-diplomatic nature, but rather of an administrative nature. The AAO acknowledges that the terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations and 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. However, 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. 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. 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. These “non-diplomatic” employees are nevertheless afforded the rights and immunities of diplomatic staff. *See Vienna Convention, supra*, Art. 37. In the case of non-diplomatic employees who are admitted pursuant to section 101(a)(15)(A)(ii) of the Act, USCIS must evaluate the position held and its attendant duties to determine whether the applicant is eligible under Section 13. To establish eligibility for Section 13 the applicant must perform some diplomatic or semi-diplomatic duties, not duties that only relate to clerical, administrative, or custodial support of the Consulate or Embassy.

In this matter, the applicant’s duties are not diplomatic or semi-diplomatic. Although the applicant’s duties do not appear to be those of service staff or personal servants, the applicant does not provide a sufficiently detailed description of duties to enable USCIS to ascertain whether the duties are clerical as the title of the position implies or whether the duties encompass semi-diplomatic duties. The record does not contain specific detail or documentation establishing that the applicant’s duties are more than administrative or clerical. 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 record does not show that the applicant had any formal advisory or decision-making role at the Consulate or that he had authority to represent Pakistan before any state or federal government agencies of the United States or other international governments or that he provided direct support for these activities. Accordingly, the record in this matter is insufficient to find that the applicant performed diplomatic or semi-diplomatic duties.

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 personal statement appended to the application, the applicant noted that his children came to the United States when they were teenagers and returning to Pakistan would be psychologically damaging to them. The applicant also indicated that he used to work under the Presidency of [REDACTED] and [REDACTED] and when it was time for him to return to Pakistan, the army had taken over the country and he felt that due to ethnic tensions and related problems, it

would not be in the best interest of his family to return to Pakistan. The applicant further noted: that his parents are deceased; that he sold his home in Pakistan prior to coming to the United States; that he has no one to give him emotional and financial support; and that due to the political and economic instability in Pakistan it is impossible for him to become employed and survive with his family. The applicant's stated reasons for not returning to Pakistan are not compelling reasons under Section 13. 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.

The AAO acknowledges the difficulty the applicant and his children would face in regards to education and employment at the same or similar station as enjoyed in the United States, when 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 the applicant's concern regarding his request for a two-year leave from the Pakistani government and the denial of that request as well as being served with a "charge sheet." However, 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.