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U.S. Citizenship  
and Immigration  
Services

A3

[REDACTED]

FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: **FEB 23 2009**

IN RE: [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.

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 Bangladesh 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 not established that compelling reasons prevent his return to Bangladesh. The field office director also noted that the Department of State issued its opinion on July 7, 2008 advising that it could not favorably recommend this matter because the applicant's reasons to remain in the United States are not compelling.

On appeal, counsel for the applicant asserts that the applicant will face persecution and extreme economical crisis if he returns to Bangladesh. Counsel also contends that the applicant and his wife suffer from medical conditions that will be severely exacerbated if they return to Bangladesh. Counsel also notes that two of the applicant's children are lawful permanent residents.

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).

A review of the record establishes the applicant's eligibility for consideration under section 13 of the 1957 Act. He entered the United States in a G-1 classification to work for the Permanent Mission of Bangladesh to the United Nations in New York. He began his service in June 1996 and was relieved of his duties on October 29, 2001. Per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States pursuant to 101(a)(15)(G)(i) of the Act but no longer held that status at the time he filed his application for adjustment on December 7, 2001.

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 Bangladesh. As noted above, the legislative history of Section 13 shows that Congress intended that "compelling reasons" relate to political charges 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. 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.

In an initial statement, dated November 23, 2001, the applicant indicated that his children had begun their high school and junior high school in the United States and that it was imperative that his family stay together so that his children could attain their academic objectives. The applicant also noted that his children were fully assimilated in the United States and would not be able to adjust to Bangladeshi culture. In the applicant’s sworn statement, dated November 6, 2007, the applicant reiterated that he wanted his family to stay in the United States for the better education of his children. The applicant also noted that Bangladesh is very unstable and that terrorists harass, kidnap, and stab people coming from the United States. The applicant stated his belief that “terrorists” persecute the Bengali people returning from the United States because the “terrorists” think that the returning Bengalis have money. On appeal, as noted above, counsel asserts that that the applicant will face persecution and extreme economical crisis if he returns to Bangladesh. Counsel also provides: a letter from [REDACTED] dated August 23, 2008, indicating that the applicant suffers from diabetes mellitus – uncontrolled, back pain, anemia, hypercholesterolemia, and chest pain; and two letters from [REDACTED] regarding a consultation on October 27, 2005 and a follow-up visit on August 30, 2008, regarding knee pain of the left knee suffered by the applicant and recommending physical therapy, NSAIDs as needed, home exercise, and a follow-up in four to six weeks. Counsel contends that the applicant and his wife suffer from medical conditions that will be severely exacerbated if they return to Bangladesh.

The AAC has reviewed the applicant’s statements and counsel’s assertions and medical letters submitted on appeal. The AAO acknowledges the applicant’s fear of returning to Bangladesh due to the lawlessness in areas of Bangladesh and the applicant’s apprehension that Bengalis returning to Bangladesh from the United States will be targeted for their money. However, the record in this matter does not present any specific evidence that the applicant would be targeted due to political changes in Bangladesh 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. Moreover, the applicant has not provided any evidence demonstrating that he would be a target of the government of Bangladesh. The applicant’s fear is speculative and is not substantiated in the record. 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)).

In addition, cultural assimilation and obtaining education in the United States are not compelling reasons as intended by Section 13 that would make the applicant unable to return to Bangladesh. The general inconveniences and hardships associated with relocating to another country and the desire to remain in the United States so that children may obtain an American education are not compelling reasons under Section 13. The AAO acknowledges the medical conditions suffered by the applicant; however, counsel has not substantiated his assertion that the applicant's medical condition will be severely exacerbated if he returns to Bangladesh. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The evidence of record does not show that the applicant is unable to return to Bangladesh for the compelling reasons required 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 Bangladesh. *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 Bangladesh. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Bangladesh, the question of whether adjustment of status would be in the national interest need not be addressed.

Beyond the decision of the field office director, the AAO finds that the applicant has not established that he performed diplomatic or semi-diplomatic duties for the Permanent Mission of Bangladesh to the United Nations. Although the applicant entered the United States in G-1 status, the undated letter of [REDACTED] under seal of the Head of Chancery, Permanent Mission of Bangladesh to the United Nations, identifies the applicant's position as an "Administrative Officer (Non-diplomat)." The AAO acknowledges the applicant's declarations in his sworn statement, dated November 6, 2007, indicating:

My primary duty was to keep track of all of the meetings that were held in the United Nations, meetings by UNDP, UNICEF, and UNFBA, and to collect all the documents from those meetings, collect all of the data, and prepare briefs for my economic minister, so that he could accurately give his speeches.

The AAO also acknowledges the applicant's claim that his duties were semi-diplomatic but had since been elevated to diplomatic duties. However, the letter of the applicant's employer stating that his duties were non-diplomatic presents an inherent inconsistency in the nature of the duties the applicant actually performed. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). USCIS must rely on a detailed consistent description of the duties to enable a thorough review and accurate conclusion regarding the nature of the described duties and whether the duties are diplomatic or semi-diplomatic or are neither.

In this matter, the applicant's description of his duties is general and not sufficiently detailed to analyze regarding the nature of the applicant's actual duties. This general description coupled with the applicant's employer's identification of the duties as "non-diplomatic" casts doubt upon the nature of

the applicant's actual duties. Without documentary evidence to substantiate his claim, the applicant has not established that his service for the Permanent Mission of Bangladesh to the United Nations incorporated diplomatic or semi-diplomatic duties. Again, 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. at 165. For this additional reason, the application will not be approved.

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 the duties he performed were diplomatic or semi-diplomatic duties and that there are compelling reasons that prevent his return to Bangladesh. 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.