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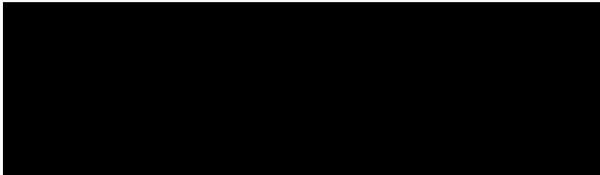
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090

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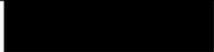


U.S. Citizenship
and Immigration
Services

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FILE:



Office: WASHINGTON DISTRICT

Date:

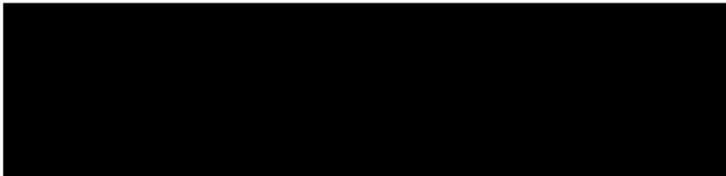
FEB 23 2009

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 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 failed to demonstrate that compelling reasons prevent his return to Bangladesh. The field office director also noted that the Department of State issued its opinion on July 11, 2008 advising that it could not favorably recommend this matter as the applicant's reasons to remain in the United States are not compelling. *Decision of Field Office Director*, dated July 25, 2008.

On appeal, the applicant submits a statement and documentation.

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.

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 serve as an administrative officer (accounts) for the Permanent Mission of Bangladesh to the United Nations. He began his service in January 1994 and was relieved of his duties on June 29, 1999. *Letter from [REDACTED] Permanent Mission of the People's Republic of Bangladesh to the United Nations in New York*, dated June 30, 1999. 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 January 18, 2000.

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

In an initial statement, appended to the application, the applicant indicated that his three children had been born and brought up abroad and did not read or write their native language and would face practical problems and difficulties if they left the United States to adjust to Bangladesh. The applicant noted his belief that they would be better off if they have the chance to use their skills and labor in the United States. The applicant also stated that he had invested his capital in a laundromat business in the United States, his children were pursuing their education in the United States and that his family preferred to stay in the United States. In the applicant's sworn statement, dated December 13, 2001, the applicant reiterated his concern for his children's education and their difficulty in adjusting to life in Bangladesh. On appeal, the applicant notes that he disposed of his property in Bangladesh and invested in a "Subway Restaurant" in Manhattan, New York. The applicant indicates that his eldest daughter is employed as a biomedical laboratory technologist and has obtained a DV-2007 visa classification; that his second daughter is employed as a lab technician, and that his son is a college student. The applicant states that his children were born in different countries and have been living in the United States for the past 15 years and that their only association with Bangladesh is through their parents and a few short visits to Bangladesh. The applicant emphasizes that their Western upbringing would render them incompetent and unsuitable to reside in Bangladesh.

The AAO has reviewed the applicant's statements, but finds that cultural assimilation and obtaining education in the United States are not reasons that make the applicant unable to return to Bangladesh as prescribed by Section 13. The applicant has not demonstrated that he is a target of the Bangladeshi government because of his government service or any other activities and thus, that he is unable to return to Bangladesh. The applicant has not provided compelling reasons related 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.

The AAO acknowledges the difficulty the applicant's children face in returning to a country that they have not lived in for a number of years. However, the general inconveniences and hardships associated with relocating to another country and a preference to remain in the United States do not demonstrate compelling reasons under Section 13. 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 Bangladesh or other political entity there as 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.

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 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.