

PUBLIC COPY

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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

A3



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:

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 he performed diplomatic or semi-diplomatic duties, that compelling reasons prevent his return to Pakistan, or that his adjustment would be in the national interest. The field office director also noted that the Department of State issued its opinion on May 5, 2008 advising that the application to adjust status be denied. *Decision of Field Office Director*, dated May 16, 2008.

On appeal, the applicant asserts that he performed semi-diplomatic duties, that the completion of his children's education is a strong enough reason to him to stay in the United States, and that his conduct and ongoing struggle to help his children achieve their academic goals will foster good will and will contribute to the national interest of the United States in the form of development and respect.

The applicant provided an undated personal statement in support of the Form I-485, Application to Register Permanent Residence or Adjust Status, and a personal statement on appeal. The record also includes the applicant's sworn statement dated January 24, 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).

A review of the record does not establish the applicant's eligibility for consideration under Section 13. The applicant was admitted in A-2 status and served as a stenographer, in the Commercial Division of the Embassy of Pakistan in Washington, D. C. from the second week of December 2002, to December 2006. See *Sworn Statement of Abdul Rashid*, dated January 24, 2008; *Letter from Muhammad Gul Khatab Abbasi, Attaché (Administration), Embassy of Pakistan, Washington, D.C.*, dated November 17, 2006.

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 a clerical nature. The AAO concurs in this determination. 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). The applicant initially indicated in an undated personal statement submitted to the field office director that his: "primary assignment was to interact, coordinate and explore growth of commercial ties between the business communities of USA and Pakistan." The

applicant, in his sworn statement of January 24, 2008 stated that his official title at the Pakistan Embassy was “Stenographer” and that his duties included:

Use to perform secretary duties for the ministry of trade. Make [appointments] with Department of Commerce and Department of Trade. Protocol would receive ministry of Commerce and bring him to the hotel. I would do dictation and type different correspondence.

The applicant also indicated in his sworn statement his belief that the duties he described were semi-diplomatic in nature. On appeal, the applicant expands upon his initial undated statement by indicating that interacting, coordinating and exploring growth of commercial ties between the business communities of the USA and Pakistan involved: “extensive negotiations, detailed correspondence and follow up actions with the US Department of Commerce, US Chambers of Commerce of different jurisdictions, and business communities in particular the Pakistan-American businessmen.” The applicant contends that his position was “designed to fill in for a junior diplomatic officer to handle routine discussions with the US Department of Commerce, pursue follow up actions at a junior level, reply to trade enquiries by the general public, and meet secretarial needs of the Trade Office.”

The applicant’s initial description of his duties is general and thus the AAO is unable to determine whether these duties should be considered diplomatic or semi-diplomatic duties. The applicant, in his January 24, 2008, sworn statement lists duties that are clerical in nature, such as performing secretarial duties, making appointments, receiving the Minister of Commerce, and taking dictation and typing. Although the applicant equated these duties to semi-diplomatic duties, the applicant does not explain why or how the clerical duties should be considered semi-diplomatic duties. On appeal, the applicant expands upon his initial general statement and indicates he was involved in “extensive negotiations, detailed correspondence and follow up actions with the US Department of Commerce, US Chambers of Commerce of different jurisdictions, and business communities in particular the Pakistan-American businessmen.” However, the applicant’s claim is not substantiated by any other evidence. 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 Embassy or that he represented Pakistan before the United States Department of Commerce in any official capacity. The record demonstrates that the applicant worked in the Pakistan Embassy as a stenographer with the attendant responsibilities of a stenographer but does not include evidence that he was entrusted with duties of a diplomatic or semi-diplomatic nature.

In addition, the AAO concurs with the field office director’s determination that the applicant failed to establish compelling reasons that prevent his return to Pakistan. The applicant’s stated reasons for not returning to Pakistan are not compelling reasons under Section 13. 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 emphasizes on appeal, it is his desire to help his children complete their university-level education in the United States that is his reason for staying in the United States. 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. In this matter, the applicant has expressed his desire to remain in the United States but has not demonstrated that he is unable to return to Pakistan based on compelling reasons related 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.

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 general inconveniences and hardships associated with relocating to another country and the desire for children to have a United States university-level education 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 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 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.