

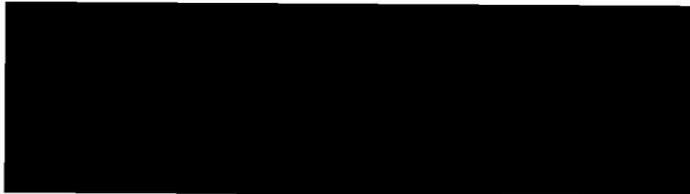
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529-2090

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U.S. Citizenship  
and Immigration  
Services



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:



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)(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 Pakistan. The field office director also determined that the applicant had filed the application for adjustment of status prior to terminating his diplomatic status, thus, was statutorily ineligible to receive this benefit. The field office director further noted that the Department of State issued its opinion on April 22, 2008 advising that it could not favorably recommend the matter because the reasons the applicant cited for remaining in the United States were not compelling.

On appeal, the applicant states the reasons for filing a Section 13 application as: his angioplasty in 1992, 1993, 1996 and in July 2006; the education of his children; and his son is a permanent resident, one daughter is a United States citizen, and a second daughter is married to a United States citizen who is applying for her adjustment of status.

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 fails to establish the applicant's eligibility for consideration under section 13 of the 1957 Act. The record shows that the applicant entered the United States on June 19, 1996 in G-1 status. In a sworn statement taken at an interview before a USCIS adjudicating officer on August 15, 2006, the applicant declared that he began his employment as an Information Assistant for the Pakistan Ministry of Information in June 1990 and that the Pakistani government notified the Department of State of the termination of his employment in June 1996. The applicant's counsel noted in the record of the interview that the applicant technically continued as an employee until 1998 as he was on medical leave from 1996 to 1998. The record also includes a letter dated February 15, 1999 signed by [REDACTED] of the Pakistan Mission to the United Nations certifying that the applicant served in the Mission with the Press Counsellor beginning May 16, 1990 and retired from government service with effect from December 31, 1998. The field office director found that Department of State records indicated that the applicant's G-1 status terminated January 1, 2001. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status on April 8, 1999.

An applicant for adjustment of status under Section 13 must not be maintaining diplomatic status in order to apply for adjustment under Section 13, thus his or her status must be terminated prior to the date on which the adjustment application is filed. Pursuant to 8 C.F.R. § 214.2(a), an alien admitted under section 101(a)(15)(G)(i) of the Act maintains that status "for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status." Therefore, the authority to determine the date of termination of status under section 101(a)(15)(G)(i) of the Act rests exclusively with the State Department. Notwithstanding the date on which the applicant's employment may have been formally terminated by the government of Pakistan, he maintained status in the United States under section 101(a)(15)(G)(i) of the Act through January 1, 2001. An application for adjustment of status under Section 13 filed while the applicant is maintaining diplomatic or semi-diplomatic status is properly denied. The AAO observes that the applicant did not address the director's determination on this issue on appeal. The AAO observes that denial of the application on this ground does not preclude the applicant from filing a new application once the requirement for applying – failure to maintain status – has been met.

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 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 in his sworn statement noted that his children have been mostly educated in the United States. On appeal, the applicant also indicates that one of his children is a United States citizen, one of his children is a lawful permanent resident, and that the third child's spouse has applied for her to adjust her status. The applicant also notes that he received angioplasty as recently as July 2008. The applicant, however, does not provide substantive evidence that he would not be able to receive similar medical treatment in Pakistan or that continuing medical treatment is available only in the United States. 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 current conditions in Pakistan but finds that the applicant has not provided reasons that demonstrate compellingly that he is unable to return to Pakistan. In this matter, the applicant has not provided compelling reasons related to political changes in Pakistan 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 finds 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 reasons. The general inconveniences and hardships associated with relocating to another country and the desire to remain with his children in the United States 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 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.

Beyond the decision of the director, the AAO further finds that the applicant has not established that he performed diplomatic or semi-diplomatic duties for the Pakistani Mission in New York. Although the record shows that the applicant was admitted under section 101(a)(15)(G)(i) of the Act, the applicant indicates his duties involved: making press clippings from U.S. major newspapers to send to Pakistan and to provide to the Pakistani ambassador; making copies of U.N. briefings to distribute to the officers; preparing a project for the information section; and performing other duties as assigned. The record does not include further detail regarding the applicant's duties in the role of information assistant. The applicant indicated his belief that these duties were semi-diplomatic in his sworn statement. However, the applicant did not explain why or how making copies and distributing materials, duties that are basic clerical duties, should be considered semi-diplomatic duties. In addition, the applicant did not provide substantive information that would indicate that any assigned duties included any formal advisory or decision-making role at the Mission or that he represented Pakistan before the United States government or any foreign government in any official capacity. The record demonstrates that the applicant worked in the Pakistan Mission as an information assistant with the attendant clerical responsibilities but does not include evidence that he was entrusted with duties of a diplomatic or semi-diplomatic nature.

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 he was entrusted with duties of a diplomatic or semi-diplomatic nature and that there are compelling reasons preventing his return to Pakistan. Moreover, the applicant was in G-1 status making him ineligible to file the Section 13 application until the status was terminated. 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.