

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 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)(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 compelling reasons prevent his return to Bangladesh. The field office director also noted that the Department of State issued its opinion on April 28, 2008 advising that it could not favorably recommend the applicant's adjustment of status as the applicant's reasons to remain in the United States are not compelling. *Decision of Field Office Director*, dated August 7, 2008.

The applicant submits a personal statement on appeal, as well as two medical letters and his daughter's tuition statements.

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 provides sufficient information to establish the applicant's eligibility for consideration under section 13 of the 1957 Act. He entered the United States in an A-2 classification and began performing duties of a semi-diplomatic nature for the Consulate General of Bangladesh in New York. The applicant began his service in the United States in July 1998 and was released from his duties on March 20, 2003. *Letter from [REDACTED] of Bangladesh, New York, dated March 20, 2003.* Accordingly, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(ii) of the Act but no longer held that status at the time he filed his application for adjustment on March 31, 2003.

The AAO now turns to a review of the evidence of record, including the information submitted on appeal regarding the applicant's reasons for not returning to Bangladesh. 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 daughter who was born and brought up abroad did not have the opportunity to learn the Bengali language as learning in the Bengali language was not an option in the countries where they lived. The applicant contended that her lack of reading and writing ability in the Bengali language would hinder her job opportunities in Bangladesh. The applicant noted that his daughter is apprehensive regarding a return to Bangladesh as she has adjusted and assimilated into the United States culture. The applicant further indicated that he gave up his career with the Bangladesh Foreign Service to stay in the United States so that his daughter could pursue an education and career in the United States, an education he could not fund if he returned to Bangladesh.

The applicant, in a June 15, 2006 sworn statement, reiterated his preference that his children obtain an excellent education, stated he felt inconvenienced to return to Bangladesh because it would be difficult to adjust to Bangladesh, and that there are always disturbances occurring in Bangladesh. The applicant also noted that he was afraid to return because as a government official people would notice his return and take a "revenging attitude." The applicant also noted that he has two daughters who currently live in Bangladesh.

On appeal, the applicant indicates that he had a cataract operation for both eyes in December 1998 and February 1999 and has periodic checkups and that if he returned to Bangladesh he would not receive proper advanced eye care. The applicant provides an August 18, 2008 letter signed by his doctor's office manager indicating that "[h]e needs to be seen periodically." The applicant also notes that his wife had a knee operation in February 2003 which was unsuccessful so that she needs to attend physical

therapy to give her temporary relief. The applicant submits an August 20, 2008 letter from his wife's doctor advising that the applicant's wife suffers from arthritis of left knee joint status post arthroscopic knee surgery, hypertension, and sciatica pain and requires physical therapy and pain management. The applicant further indicates that his daughter has not completed her undergraduate degree, that her credits would not transfer to universities in Bangladesh, that she is not accustomed to the native culture of Bangladesh, and that she assists his wife with her care.

Upon review of the totality of the record, 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 has reviewed the applicant's statements as well as that of his daughter and the documentation submitted on appeal. However, the applicant has not submitted evidence that substantiates that he or his family members would be the target of the Bangladeshi government or other political organizations or would be at greater risk of harm because of his past government employment, political activities or other related reasons. 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 applicant's desire to assist his daughter in obtaining a United

States university-level education. However, this desire is not a compelling reason that prevents the applicant from returning to Bangladesh. Similarly, the desire for the advanced health care available in the United States is not a reason that precludes the applicant or his family's return to Bangladesh. 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 acknowledges that country conditions in Bangladesh show a country continuing to struggle with democracy and the universal freedoms enjoyed by many individuals in the United States are not always available. However, the record in this matter does not present any evidence that demonstrates specific threats against the applicant and his family members and thus show compellingly that he is unable to return to Bangladesh. The AAO observes that the applicant has two daughters who now live in Bangladesh, one who returned to Bangladesh from the United States and one who has not lived in the United States. The AAO does acknowledge the difficulty the applicant's daughter faces in returning to a country she has not lived in for significant periods of time. However, the general inconveniences and hardships associated with relocating to another country and the desire to remain in the United States to obtain a university-level education are not 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 and that his continued residence in the United States is in the national interest. 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.