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U.S. Citizenship
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Services

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A3

[REDACTED]

FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: **FEB 24 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 he performed diplomatic or semi-diplomatic duties; that the applicant had failed to demonstrate that compelling reasons prevent his return to Bangladesh; and that his adjustment of status would be in the national interest of the United States. The field office director also noted that the Department of State issued its opinion on February 26, 2008 advising of its recommendation that the applicant's request to change status be denied. *Decision of Field Office Director*, dated March 14, 2008.

On appeal, counsel for the applicant asserts that the field director erred in her decision. Counsel submits a brief and documentation in support of the appeal.

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 for the Permanent Mission of Bangladesh to the United Nations in New York. He began his service on January 4, 1998 and was relieved of his duties on March 1, 2004. *Letter from [REDACTED] Head of Chancery, Permanent Mission of the People's Republic of Bangladesh to the United Nations in New York, dated March 25, 2004.* 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 April 12, 2004.

In the applicant's sworn statement, dated February 2, 2006, the applicant declared that his official title was administrative officer and that his duties involved the files of the ambassador. On appeal counsel for the applicant provides the applicant's affidavit dated May 8, 2008. The applicant declares that his title at the Bangladesh Mission to the United Nations was "personal officer" and he provides the following description of his duties in this position:

In my capacity I assisted the ambassador (permanent representative). I prepared letters for the ambassador. He dictated to me the results of his negotiations so I would prepare and type reports of the negotiations to send to the Bangladesh government. I maintained and organized the files and correspondence. Since I performed these duties for the ambassador, my position was considered semi-diplomatic.

Also on appeal, counsel for the applicant asserts that the applicant's duties were supportive of the permanent representative who was directly involved with diplomatic duties, thus the applicant's duties were semi-diplomatic in nature. Counsel references an attached "office order" dated February 22, 2000, indicating that the applicant's duties and title were listed on the document. However, the record does not include this document.

Although the record shows that the applicant was admitted under section 101(a)(15)(G)(i) of the Act and no longer maintained that status at the time he filed for adjustment of status, the field office director found that the applicant's duties as an administrative officer were administrative in nature and not in any way diplomatic. The AAO observes that the terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. The AAO also acknowledges that the standard definitions of terms such as diplomat, diplomatic and diplomacy are varied and broad, and that, in practice, diplomacy may encompass many responsibilities and duties. The AAO finds, however, that 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, 8th Edition, 2004* (Diplomacy: The art and practice of conducting negotiations between national governments). The inclusion of the term semi-diplomatic in 8 C.F.R. § 245.3 indicates that those accredited aliens not engaged in diplomatic duties, but who perform duties in direct support and furtherance of such activities, may also be considered for adjustment of status under Section 13, unless their duties were merely custodial, clerical or menial. However, duties that are not exactly custodial, clerical, or menial are not necessarily diplomatic or semi-diplomatic duties. USCIS must rely on a detailed description of the duties to enable a thorough review and accurate a conclusion regarding the nature of the described duties and whether the duties are diplomatic or semi-diplomatic duties or are not.

The applicant's description of his duties in his sworn statement on February 2, 2006 indicates that he was involved in the clerical tasks of typing and filing. This description indicates that the applicant's duties are clerical duties. In the applicant's statement on appeal, the applicant referenced taking dictation and typing and preparing letters as well as organizing files and correspondence. These duties, again, are clerical duties. The AAO acknowledges counsel's assertion that the applicant's duties were supportive of the permanent representative and thus, semi-diplomatic. However, semi-diplomatic duties under Section 13 do not encompass clerical duties. The record does not include any other information sufficient to enable either the field office director or the AAO to conclude that the applicant's "support of the permanent representative" extended beyond the assistance provided by a stenographer/typist/ file clerk. 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 concurs with the field office director's determination and finds that the applicant's duties were clerical duties and were not semi-diplomatic duties.

The AAO also 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.

In an initial statement, dated April 8, 2004, the applicant indicated that both his children had lived outside of Bangladesh for most of their lives and that he believed it imperative that he stay in the United States to continue his children’s proper education. The applicant noted that his children did not have written knowledge of Bengali and did not speak Bengali that well and had adjusted to the culture and traditions of the United States. In the applicant’s sworn statement, dated February 2, 2006, the applicant reiterated his concern for his children’s education and when asked indicated that he did not fear persecution if he returned to Bangladesh. On appeal, the applicant again declares that both his children have adjusted to the American way of life. Counsel asserts that the children are culturally assimilated in the United States and lack sufficient skills in their native Bengali to function in that society.

The AAO has reviewed the applicant’s statements and counsel’s assertions on appeal. However, cultural assimilation and obtaining education in the United States are not reasons that preclude the applicant’s return to Bangladesh. The record in this matter does not present any specific reasons that demonstrate that the applicant is a target of the Bangladeshi government and thus show compellingly 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. 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.

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 the desire to remain in the United States so that children may obtain an American 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 the duties he performed were diplomatic or semi-diplomatic duties and 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.