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U.S. Department of Homeland Security  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

A3

FILE:

Office: WASHINGTON DISTRICT

Date: **MAR 04 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)(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 of the United States. The field office director also noted that the Department of State issued its opinion on September 17, 2007 advising that the applicant's reasons to remain in the United States are not compelling. *Decision of Field Office Director*, dated November 5, 2007.

On appeal, counsel for the applicant asserts that the field director's decision is arbitrary and illegal. 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.

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 an Assistant Accounts Officer in the Finance and Accounts Division of the Embassy of Pakistan in Washington, DC from November 10, 2002 to January 13, 2006. In a May 4, 2006 letter signed by [REDACTED] of the Embassy of Pakistan, [REDACTED] listed the applicant's responsibilities during the time period he was employed as:

- Preparation & Maintenance of monthly pay roll of employees of the Embassy.
- Managing Internal & External Audit Reports.
- Managing the Accounts Payable and Accounts Receivable functions.
- Scrutinizing the claims for accuracy before approval of Finance & Accounts Officer.
- Preparation of Annual budget of various wings in the Embassy.
- Maintaining the Accounts of Special projects of the Embassy.
- Maintenance of HR record of the officials of the Embassy.
- Other duties as assigned by the Finance & Accounts Officer.

In the applicant's sworn statement dated October 11, 2006, the applicant stated his title was Assistant Accounts Officer and that his duties were to supervise and maintain the accounts of the Embassy of Pakistan in Washington, DC. On appeal, the applicant submitted a December 4, 2007 statement also signed by [REDACTED] who elaborates upon the applicant's duties at the Pakistani Embassy in Washington, DC. [REDACTED] indicates that the applicant was responsible for a number of monthly, quarterly, and annual reports for various Ministries of Government of Pakistan and other agencies/departments and for interaction with the National Bank of Pakistan in Washington, DC, as

well as ensuring compliance with financial rules, regulations, and instructions. [REDACTED] also notes that the applicant was actively involved with making payments for the construction of a new Embassy Building and for renovation of a residential building. [REDACTED] further states that the “duties of the officer were Quasi Diplomatic,” and that “on weekends when there was a public holiday, he was required to report for duty at the Embassy as Duty Officer on rotational basis,” and “during the visits of high level delegations from Pakistan, like all other personnel of the Embassy, he was also assigned special duties.”

On appeal, counsel asserts that these duties are semi-diplomatic and takes issue with the field director’s reliance on Black’s Law Dictionary’s definition of “diplomatic.” Counsel asserts that the applicant’s involvement with sensitive and confidential information of a financial nature, although not the conduct of public diplomacy, is semi-diplomatic.

The AAO disagrees. The terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. Although the term “diplomatic” is used in the Act to describe aliens admitted to the United States under section 101(a)(15)(A) of the Act, the language and intent of 8 C.F.R. § 245.3 is to exclude from consideration for adjustment of status under Section 13 certain aliens admitted in “diplomatic” status and entitled to the rights and immunities afforded diplomats under international law. Both section 101(a)(15)(A) of the Act and the Vienna Convention recognize that certain accredited employees or officials admitted to serve within embassies or other diplomatic missions are not “diplomatic” staff. The Vienna Convention refers to such personnel as administrative and technical staff, service staff, or personal servants. *The Vienna Convention on Diplomatic Relations*, Art. 1 (April 18, 1961), 500 U.N.T.S. 95. Whereas ambassadors, public ministers, and career diplomatic or consular officers are admitted under section 101(a)(15)(A)(i) of the Act, those admitted under section 101(a)(15)(A)(ii) such as the applicant are described only as “other officials and employees” accepted on the basis of reciprocity. These “non-diplomatic” employees are nevertheless afforded the rights and immunities of diplomatic staff. *See Vienna Convention, supra*, Art. 37. Moreover, 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 AAO finds that the applicant’s duties are not diplomatic or semi-diplomatic. Although the applicant’s duties are not those of service staff or personal servants, the applicant’s duties as described relate to the administration of internal financial affairs of the Embassy of Pakistan in Washington, DC., in an administrative or technical role. [REDACTED]’s assertion that the duties of the applicant were quasi diplomatic and that the applicant reported as a duty officer on some weekends and was assigned special duties on some occasions is not sufficiently detailed to ascertain whether the duties performed on these occasions constituted semi-diplomatic duties. 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 had authority to represent Pakistan before

any state or federal government agencies of the United States or other international governments. Accordingly, the record in this matter is insufficient to find that the applicant performed diplomatic or 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 Pakistan. The applicant's stated reasons for not returning to Pakistan are not compelling reasons under Section 13. 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 this matter, the petitioner provided a personal statement dated June 12, 2006 in which he indicated his desire to improve his education in the United States and in which he noted that if his children returned to Pakistan they would lose several academic sessions until they adjusted to the new medium of instruction. On appeal, the applicant adds that his daughter, if returned to Pakistan, would lose an academic year, would be unsuccessful because she cannot read or write Urdu, and that her educational opportunities would be compromised as she is female. The applicant also notes that his son, although he would not be subjected to discrimination based on his gender, would grow up in an atmosphere where women are devalued. The applicant further notes that all his children would be exposed to the poor sanitation and health conditions in Pakistan. The applicant states that he would not be able to find

work because of his age and that he and his family would live in poverty. The applicant states that he regards avoiding this situation compelling.

The AAO acknowledges the evidence of hardship to the applicant and his children if they return to Pakistan. However, the general inconveniences and hardships associated with relocating to another country 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 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 Pakistan or other political entity there as required under Section 13. 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 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 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.