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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

AG

FILE: [REDACTED] Office: WASHINGTON DISTRICT

Date: **MAR 12 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:

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)(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 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 July 7, 2008 advising that it could not recommend approval of this case as the applicant's reasons to remain in the United States are not compelling.

On appeal, counsel for the applicant asserts that the field office 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. The applicant was given G-1 classification and served in the Permanent Mission of Bangladesh to the United Nations from May 1995 to December 15, 2000. Accordingly, per the requirements of section 13(a) of the 1957 statute, the applicant held status under 101(a)(15)(G)(i) of the Act but no longer held that status at the time he filed his application for adjustment on November 21, 2005.

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 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).

In an initial statement appended to the application, the applicant indicated that his children were brought up in the United States and could not read and write their native language of Bengali. The applicant noted that his children are fully Americanized and would face great hardship in education and socialization in Bangladesh and would be subjected to different treatment in Bangladesh that would result in “maladjustment and possible adverse psychological and other effects.” In an April 12, 2002 interview with a USCIS officer, the applicant declared that in the United States he gets much more respect than he would in Bangladesh; that his children are familiar with America; that in Bangladesh there is kidnapping and blackmail and he does not want to expose his children to those types of dangerous situations; and that he loves the United States and its society.

On appeal in a December 19, 2008 affidavit, the applicant declared that he is a member of a small Muslim sect, [REDACTED], a sect that is subjected to discrimination and prejudice from Muslims of other sects. The applicant noted that while employed at the Permanent Mission of Bangladesh in the United States, he was subjected to discrimination by his boss, an individual of the Sunni Muslim sect. The applicant declares further that his boss threatened that if he did not do as he was asked he would be transferred to a bad position in an isolated area in Bangladesh and that was when he decided to resign his position. The applicant indicates that his resignation was not accepted due to his boss’s political influence. The applicant declares that he is afraid of political harassment if he returns to Bangladesh and notes that there are many arbitrary and unlawful arrests and detentions in Bangladesh. The applicant declares that he and his family have a tremendous fear of persecution and asserts that he and his family would be targeted for attacks, torture, kidnapping, and killing. The applicant explains that he was not able to articulate all his concerns regarding a return to Bangladesh at his 2002 interview because he was nervous and his English was not good. The applicant provides excerpts from various sources regarding the country conditions in Bangladesh including information that the [REDACTED] sect was subjected to attacks in 2003 and 2004 but that by 2007 the situation was improving.

The AAO has reviewed the applicant’s statements and the current country condition information on Bangladesh. The AAO acknowledges that country conditions in Bangladesh show a country continuing to struggle with democracy and that the universal freedoms enjoyed by many individuals in the United States are not always available in Bangladesh. However, the record in this matter does not present any specific reasons that demonstrate that the applicant is a target of the government and thus show compellingly that he is unable to return to Bangladesh. The AAO acknowledges the applicant’s fear that he would be subjected to political harassment and his fear that he and his family would be targeted for attacks, torture, kidnapping, and killing. However, 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. 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 applicant’s general fear that he and his family would be subjected to

attacks, torture, kidnapping, and killing is speculative. The applicant's fear of political harassment from his former boss or because of his boss's political influence is also speculative. Similarly, the applicant's statements on appeal regarding his religious faith and the unarticulated implication that he might be targeted or discriminated against because of his faith are not substantiated. The applicant has not provided evidence 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.

The AAO also acknowledges the difficulty the applicant's children face in returning to a country they have not lived in during their formative 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 a United States education are not compelling reasons under Section 13. As noted above, the AAO acknowledges the turmoil and economic conditions that exist in Bangladesh today as outlined in the country reports the applicant submitted on appeal. However, also as determined above, the applicant has not provided evidence that his children would be at greater risk of harm from the Bangladeshi government due to political changes in Bangladesh that occurred while the applicant was employed in the United States for the government of Bangladesh. The evidence of record does not show that the applicant and his family are 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.

Beyond the decision of the director, the AAO finds that the applicant has not established eligibility under Section 13 as an individual who performs diplomatic or semi-diplomatic duties. Although the applicant was admitted in G-1 status, he served as a stenographer/typist at the Permanent Mission of Bangladesh to the United Nations in New York. The record does not include a detailed description of the applicant's duties in the role of stenographer/typist. The applicant, in his April 12, 2002 sworn statement declared that he was helping the press counselor to create favorable publicity for Bangladesh. The applicant declared further that he was "like assistant, personal assistant to the First Consul" and that he helped the press counselor to create "press release, media, like interviews," "like liaison to the local media like newspaper." The general information the applicant provided regarding his duties is inconsistent with his designation as a stenographer/typist. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the applicant equated his claimed duties to semi-diplomatic duties, the applicant does not provide detailed information indicating his actual role as a personal assistant and whether these duties involved clerical and administrative duties or duties that are semi-diplomatic duties.

The record does not show that the applicant had any formal advisory or decision-making role at the Mission or that he represented Bangladesh before the United States government or any foreign government in any official capacity. The AAO acknowledges that 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. However, 8 C.F.R. § 245.3 provides that 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 AAO notes that 8 C.F.R. § 245.3 does not provide that duties that are not considered custodial, clerical or menial are necessarily diplomatic or semi-diplomatic duties. The record in this matter is insufficient to establish that the applicant performed semi-diplomatic duties in support of the Permanent Mission of Bangladesh rather than clerical and administrative duties. For this additional reason, the application may not be approved.

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 there are compelling reasons preventing his return to Bangladesh and that his duties constituted diplomatic or semi-diplomatic duties for the Permanent Mission of 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.