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



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

A3

[REDACTED]

FILE:

[REDACTED]

Office: WASHINGTON, D.C. Date:

AUG 11 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decision will be affirmed in part and withdrawn in part. The application will be denied.

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 the immediate relative of 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 of the applicant's father after determining that he had failed to demonstrate that he performed semi-diplomatic or diplomatic duties and that compelling reasons prevent his return to Pakistan and that adjustment would be in the national interest. *Decision of Field Office Director*, dated February 28, 2008. The field office director denied the applicant's adjustment application on the basis of his father's ineligibility for benefits under Section 13. Counsel appealed both decisions. In a separate decision, the AAO dismissed the appeal of the applicant's father on the grounds that he failed to establish that he performed diplomatic or semi-diplomatic duties and that he failed to establish compelling reasons that prevent his return to Pakistan as required under Section 13. As the applicant's eligibility for adjustment under Section 13 derived from the eligibility of his father, and the applicant had not asserted compelling reasons separate from those claimed by his father, the AAO also determined that the applicant was ineligible for adjustment of status.

On motion, the AAO withdrew its previous determination that the applicant's father had not established that he performed diplomatic or semi-diplomatic duties as an accountant for the Consulate General of Pakistan in New York and affirmed its previous decision that the applicant's father had not established that compelling reasons prevent his return to Pakistan. The AAO did not reach the issue regarding whether the applicant's father's adjustment of status would be in the national interest of the United States. As the applicant's eligibility for adjustment under Section 13 derives from the eligibility of his father, and the applicant has not provided new facts or pertinent precedent decisions separate from those claimed by his father, the AAO withdraws its previous determination that the applicant's father had not established that he performed diplomatic or semi-diplomatic duties as an accountant for the Consulate General of Pakistan in New York and affirms its previous decision that the applicant's father had not established that compelling reasons prevent his return to Pakistan.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. 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.

ORDER: The previous decision of the AAO is withdrawn as it relates to the characterization of the applicant's father's semi-diplomatic duties and is affirmed as it relates to the issue of compelling reasons that prevent the applicant's return to Pakistan. The application is denied.