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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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

[Redacted]

A3

DATE: **AUG 14 2012** Office: WASHINGTON DISTRICT FILE: [Redacted]

IN RE: Applicant: [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 \$630. 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 Acting 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 acting field office director denied the Form I-485, Application to Register Permanent Residence or Adjust Status, on May 16, 2011. The acting field office director determined that the applicant had failed to demonstrate that compelling reasons prevent his return to Bangladesh. The acting field office director also noted that the Department of State issued its opinion on November 20, 2008, advising that it could not favorably recommend the applicant's adjustment of status to that of a lawful permanent resident.

The applicant's wife (██████████, ██████████), his daughter (██████████, ██████████) and his daughter (██████████, ██████████) each submitted an Application to Register Permanent Residence or Adjust Status (Form I-485), seeking to adjust status under Section 13. The acting field office director issued separate decisions denying these applications. These dependents each filed a separate Form I-290B, Notice of Appeal. The AAO will issue a separate decision for each of the dependents.

On appeal, counsel asserts that the acting field office director erred in her decision to deny the application. Counsel contends that the applicant and his family have compelling reasons why they cannot return to Bangladesh and that allowing them to remain in the United States is in the national interest.

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, United States 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 establishes the applicant's eligibility for consideration under Section 13. The applicant was admitted in A-2 status and served as a Personal Officer for the Embassy of Bangladesh in Washington, D.C., from June 2000 until the end of his tenure on September 17, 2007. The applicant was responsible for sensitive data inquiry for the government in Bangladesh and the United States and sensitive trade disputes. The applicant also monitored monthly commercial activity in Bangladesh, prepared the commercial budget and worked on multi-lateral trade between the United States and Bangladesh. The applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status on October 15, 2007. Therefore, the AAO concurs with the field office director that, per the requirements of Section 13, the applicant was admitted to the United States in semi-diplomatic status under 101(a)(15)(A)(ii) of the Act but no longer held that status at the time of his application for adjustment on July 1, 2003.

As a result, the only issue before the AAO is whether the record also establishes that compelling reasons prevent the applicant's return to Bangladesh and that his adjustment will serve U.S. national interests.

On appeal, counsel asserts that the applicant has demonstrated compelling reasons why he cannot return to Bangladesh. Counsel claims that the applicant is particularly concerned about the "certain harm, discrimination, and cruel treatment that his 'western' raised and educated daughters would face in Bangladesh if they returned." Counsel contends that the applicant's daughters would be "thrust into a dangerous situation that would result in the deprivation of rights based on archaic customs and traditions that are foreign to them and their western upbringing," and that they would face a bleak future, with no chance to continue their education or decide their own future.

At his adjustment interview on August 28, 2008, the applicant completed a Sworn Statement. In the statement, the applicant indicated that he does not want to return to Bangladesh because the political situation in the country has changed since he left. The applicant stated that his children's education will be adversely affected if he returns to Bangladesh because his children do not speak Bengali, the official language of Bangladesh.

The record contains statements from the applicant and his children stating reasons why they do not want to return to Bangladesh. The applicant expressed fear that his children will not be able to continue their education or obtain jobs in Bangladesh because they do not speak the country's official language, Bengali, and that they will have difficulty adjusting to the school system as everything is taught in Bengali. The applicant states that his children are used to the western lifestyle and that going back to Bangladesh with them will "trigger unimaginable cultural conflicts that will bring confusions, turmoil, and immeasurable frustration to their lives." The applicant claims that the current situation of political turmoil, years of natural disasters and poverty, will adversely affect his children in that "my daughter's dreams of obtaining a higher education with pleasant jobs will be shattered."

The AAO notes the documentation submitted by the applicant relating to his daughters' education in the United States and acknowledges that the applicant's children may experience difficulties adjusting to the educational system in Bangladesh. However, as referenced above, 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. The general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13.

The applicant has not claimed or provided evidence demonstrating that he is at greater risk of harm because of his past government employment, political activities or other related activities. We also note that the State Department has objected to the applicant being granted adjustment of status and indicated that the applicant's reasons to remain in the United States are not compelling. *See Interagency Record of Request (Form I-566), dated October 11, 2007.*

Based on the evidence of record, 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. The applicant has failed to demonstrate that the government of Bangladesh will not allow his return to that country, or that his past employment as a Personal Officer at the Bangladesh Embassy in Washington, D.C., places him and his family in danger and renders them unable to return to Bangladesh. Accordingly, the applicant has failed to demonstrate that he or any member of his immediate family have compelling reasons as contemplated under Section 13 that prevent them from returning to Bangladesh.

Although unnecessary to address as the applicant has failed to demonstrate that there are compelling reasons preventing his return to Bangladesh, the AAO briefly notes that the applicant has also failed to demonstrate his adjustment of status is in the national interest. The applicant claims that if allowed to remain in the United States, that he plans to start his own business and pay taxes, thereby contributing to the economy of the United States. The applicant also claims that due to his daughters' "magnificent good education record," they will grow up to be wonderful well-educated citizens and productive members of the society. The AAO notes the applicant's claims about his daughters' educational achievements but does not see how they relate to the national interest of the United States. The applicant has not provided definitive information showing how or why his continued residence in the United States will benefit the U.S. government. Thus, the applicant has not established his adjustment of status is in the national interest.

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. 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.