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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**

A3

[REDACTED]

DATE: **AUG 20 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 Pakistan who is seeking to adjust his status to that of a 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 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 acting field office director also noted that the Department of State issued its opinion on March 15, 2011, advising that it could not favorably recommend the applicant's adjustment of status to that of a lawful permanent resident because the applicant did not perform diplomatic or semi-diplomatic duties and the reasons he wants to remain in the United States are not compelling. *Decision of the Acting Field Office Director*, dated April 20, 2011.

The applicant's spouse [REDACTED] and daughter ([REDACTED]) each submitted an Application for Status as Permanent Resident (Form I-485) seeking to adjust status under Section 13 as a dependent of the applicant. The 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 applicant and his family have demonstrated that the applicant performed duties in a semi-diplomatic capacity for the Embassy of Pakistan, that there are compelling reasons why the applicant and his family cannot return to Pakistan, and that allowing the applicant and his family to remain in the United States is in the national interest of the United States.

Counsel contends that the applicant's return to Pakistan would jeopardize the health and education of his children and that it is in the national interest of the United States to avail itself of hardworking individuals, like the applicant and his family, who will contribute to the society economically.

The record includes, but is not limited to a letter from counsel; statements from the applicant; copies of medical statements and records relating to the applicant's daughter; copies of school records of the applicant's children; and copies of documents relating to the applicant's professional advancement. The entire record has been reviewed in rendering a decision on 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 accountant for the Embassy of Pakistan in Washington, D.C. The applicant served in this capacity from May 7, 2000 to May 31,

2004. See *Applicant's Sworn Statement* dated July 29, 2005. At his adjustment interview on July 29, 2005, the applicant stated that his duties for the Embassy were "purely accounting jobs. Mainly related to defense procurement and all other duties the employer asked me to perform." In his statement dated May 11, 2011, the applicant claims that he served as a supervisory accountant for the Embassy in the area of defense procurement. He also claims that in addition to the regular accounting duties of auditing, accounting, and financial advice, he was a member of the team representing Pakistan in defense procurement from the United States.

On appeal, counsel asserts that the applicant's accounting duties in support of the Embassy of Pakistan fall within the ambit of semi-diplomatic duties because they were in the sensitive area of defense procurement. Counsel claims that the applicant was involved in every defense procurement transaction between Pakistan and the United States during his period of service, with such transactions increasing substantially and becoming more secure and sensitive following the increase in anti-terrorist actions by the United States in Afghanistan and Pakistan.

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 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. The duties as described by the applicant in his July 29, 2005 statement, relate generally to the administration of the internal financial affairs of the Embassy of Pakistan. The record does not contain specific details or documentation establishing the exact nature of the applicant's accounting duties performed for the Embassy. The applicant's claim that he represented the government of Pakistan in defense procurement transactions with the United States is not substantiated by objective evidence. 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 of Pakistan 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 reason 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. 433, fn. 12 (1987). The legislative history supports the plain 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 case, the applicant stated on July 29, 2005, that his top compelling reason for wanting to remain in the United States is to take the Certified Public Accountant (CPA) examination and become an accountant in the United States. *See Record of Sworn Statement by Ijaz Rana*, dated July 29, 2005. In his May 11, 2011 statement, the applicant indicated that the reasons he does not want to return to Pakistan relates to the health and continued education of his children as well as his desire to be an accountant in the United States. On appeal, counsel reiterates that the applicant's compelling reasons for not returning to Pakistan relate to his daughter, Malleha's health condition and his desire for Malleha to receive proper medical attention when needed and for his two children

to continue pursuing their academic studies in the United States. Counsel contends that a return to Pakistan would jeopardize the health and education of the applicant's children. The AAO notes the medical documentation submitted by the applicant relating to Malleha's medical treatment at Inova Fairfax Hospital for Children in 2009 as well as the school records of his children.

We acknowledge the difficulty the applicant and his children would face in regards to the education and health care of his children if they returned to Pakistan. However, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. 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. 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 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 applicant has submitted no evidence showing that he is at greater risk of harm because of his past government employment, political activities or other related reason.

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 Pakistan. The applicant has failed to demonstrate that the government of Pakistan will not allow his return to that country, or that his past employment as an accountant for the Embassy of Pakistan in Washington D.C., places him and his family in danger and renders them unable to return to Pakistan. 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 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 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 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.