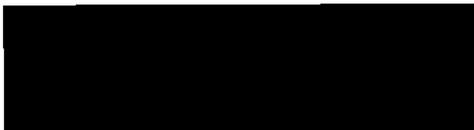


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



A3

Date: **AUG 23 2012** Office: WASHINGTON DISTRICT

FILE:

IN RE: Applicant:

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:

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 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 establish that he performed diplomatic, or semi-diplomatic duties, and failed to demonstrate that compelling reasons prevent his return to Pakistan. *Decision of Field Office Director*, dated June 3, 2011.

On appeal, counsel contends that in denying the application, the director applied an improper standard and failed to consider the evidence provided. Counsel also asserts that the applicant has established that he performed duties in a semi-diplomatic capacity for the Embassy of Pakistan, and the director did not consider the evidence of compelling reasons submitted by the applicant. Counsel states that the applicant's reasons for staying in the United States - his employment; friendships; educational, professional and social opportunities for his children; etc. amounts to compelling reasons under Section 13.

Counsel contends that the applicant's young daughter has been raised mostly in the United States and she has spent only a few years in Pakistan. Counsel also asserts that an increase in religious intolerance, and discrimination against women in Pakistan, would negatively impact the applicant and his family members if he returns to Pakistan; and, that the applicant's children would receive an inferior education in Pakistan, and would not be able to continue pursuit of their educational goals.

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 Attorney General 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 Attorney General 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 Attorney General, in his discretion, may record the alien's lawful

admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

8 U.S.C. § 1255(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 last admitted to the United States in A-2 status on or about February 1, 2004 and served as a "Clerk" to the Defense and Military Attache at the Embassy of Pakistan in Washington, D.C., until October 14, 2007 when his tour of duty ended. See *Sworn Statement of Noor Muhammad*, dated February 12, 2009.

The record shows that the applicant was admitted under section 101(a)(15)(A)(ii) of the Act. However, the applicant did not perform diplomatic or semi-diplomatic duties. There is no indication in the record that the applicant performed diplomatic or semi-diplomatic duties. In his sworn statement, the applicant testified that he served as Clerk to the Defense and Military Attache at the Embassy of Pakistan. The AAO finds that the applicant's duties, as a Clerk to the Defense and Military Attache, were not diplomatic or semi-diplomatic in nature. The AAO concurs with the field office director's determination that the applicant has failed to establish that he performed diplomatic or semi-diplomatic duties.

The AAO now turns to the issue of whether the applicant has established compelling reasons that prevent his return to Pakistan.

The AAO also concurs with the field office director's determination that the applicant has 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. As discussed 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.

Counsel has asserted that the director erred in construing the reasons deemed “compelling,” and that the director applied an unlawful standard in evaluating the evidence. The AAO disagrees.

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.” 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 keenly 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.

Furthermore, 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 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 noted that in his Sworn Statement before an Immigration Officer on February 12, 2007, the applicant testified that he fears that he will be kidnapped for ransom if he returns to Pakistan because he has lived in the United States for several years; and that he could be arrested as a member of the military who did not return to Pakistan when his tour of duty ended. The applicant’s claim that he would be kidnapped for ransom because he has resided in the United States is not supported by documentation. Nor is his claim that his arrest for deserting the military would be a consequence of his failure to return to Pakistan when his tour of duty ended as is required. The applicant’s stated reasons for not returning to Pakistan are not compelling reasons under Section 13. Furthermore, there is no indication in the record that the claimed “compelling reasons” relate to political changes that render the applicant “stateless or homeless” or at risk of harm following political upheavals in Pakistan, the government which accredited the applicant.

It is also noted that the State Department has objected to the applicant being granted adjustment of status and indicated that the applicant did not perform diplomatic or semi-diplomatic duties, and it does not believe that compelling reasons prevent the applicant's return to Pakistan. *See* Interagency Record of Request (Form I-566). 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 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.