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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: **JUL 25 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:

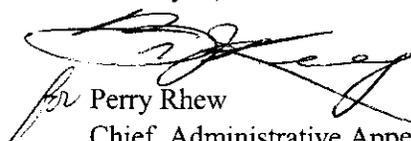
[REDACTED]

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,


for 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 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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The field office director denied the Form I-485, Application to Register Permanent Residence or Adjust Status, on August 13, 2008. The field office director determined that the applicant had failed to demonstrate that compelling reasons prevent his return to Pakistan. The field office director also noted that the Department of State issued its opinion on October 3, 2006 and again on April 22, 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 [REDACTED] and [REDACTED] each submitted an Application for Status as Permanent Resident (Form I-485) seeking to adjust status under Section 13. 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 summarizes the evidence submitted by the applicant and contends that this evidence establishes that there are compelling reasons why the applicant and his family are unable to return to Pakistan and why their adjustment to permanent resident status is in the national interest. *Counsel's Brief on Appeal*, dated September 8, 2008. Counsel asserts that the denial of the applicant's application for adjustment of status would result in extreme hardship to his U.S. citizen sons. Counsel also asserts that the applicant's [REDACTED] and [REDACTED] suffer from medical and developmental conditions that will be severely exacerbated if they return to Pakistan. Counsel contends that the applicant's children would not be able to receive adequate medical care and treatment in Pakistan. Counsel claims that the country condition in Pakistan has deteriorated and that the applicant and his family would be adversely affected by the political and the current economic condition in Pakistan.

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 G-1 status and served as an Information Assistant in the Pakistan Mission to the United Nations from December 26, 1998 to May 21, 2003.

The Form I-566, Inter Agency Record of Request, shows that the applicant's G-1 employment was expected to end on May 27, 2003. The applicant submits a photocopy of a May 27, 2003 letter signed by [redacted] Pakistan Mission to the United Nations, stating that the applicant was relieved of his duties in the Permanent Mission of Pakistan to the United Nations New York on May 21, 2003. The applicant filed this Form I-485, Application to

Register Permanent Resident or Adjust Status on July 1, 2003. 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 diplomatic status under 101(a)(15)(G)(i) 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 Pakistan and that his adjustment will serve U.S. national interests.

On appeal, counsel claims that the applicant has demonstrated compelling reasons to remain in the United States for the following reasons:

- The applicant's U.S. citizen son is suffering from development, dental, and medical conditions;
- The applicant's daughter is suffering from serious neurological and medical problems and that treatment for her condition is not available in Pakistan;
- The applicant is not a security threat to the community and has never been arrested anywhere in the world;
- The applicant has never received public assistance in the United States; and
- The country condition has deteriorated in Pakistan and that the applicant has severed ties with Pakistan.

At his adjustment interview on December 15, 2005, the applicant indicated that he does not want to return to Pakistan for the following reasons:

- His daughter has serious medical conditions and is receiving medical specialized treatment in the United States, which will not be available in Pakistan;
- He wants a better future and education for his two United States citizen sons;
- His sons cannot read or write Urdu and if he takes them back to Pakistan, there will be no future for them.

The AAO notes the documentation submitted by the applicant relating to the medical and psychological conditions of his children and acknowledges that the applicant and his family would experience hardship if they relocated to Pakistan. 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 AAO notes that at his adjustment interview on December 15, 2005, the applicant stated that he and his family would not be subjected to persecution if he is required to depart the United States to Pakistan. We also note that the State Department has objected to the applicant being granted adjustment of status and indicated that it does not believe that compelling reasons prevented the applicant's return to Pakistan. *See Interagency Record of Request (Form I-566)*, dated April 22, 2008, and a memo from [REDACTED] Department of State, Washington, D.C., dated October 3, 2006.

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 Information Assistant in the Pakistan Mission to the United Nations in New York, 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.