



U.S. Citizenship
and Immigration
Services

X3

[Redacted]

DATE: Office: NATIONAL BENEFITS CENTER FILE: [Redacted]

OCT 05 2012
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 Director (director), National Benefits Center. The matter 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 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 director denied the Form I-485, Application to Register Permanent Residence or Adjust Status after determining that the applicant had failed to demonstrate that compelling reasons prevent his and his family's return to Bangladesh. The director also noted that the U.S. Department of State issued its opinion on June 23, 2011, recommending that the applicant's adjustment of status be denied because the applicant has failed to provide compelling reasons why he does not want to return to Bangladesh. *Decision of the Director*, dated June 11, 2012.

The applicant's spouse [REDACTED] his two sons [REDACTED] and [REDACTED] each submitted an Application for Status as Permanent Resident (Form I-485) seeking to adjust status under Section 13 as dependents of the applicant. The 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 director failed to consider the current circumstances in Bangladesh which warrants approval of the application. Counsel claims that the political party the applicant was previously affiliated with is no longer in power and that the applicant does not have "any of the safety and security for himself and his family as would have been the case if his political affiliation had remained within the government instead of against the government." Counsel contends that investigators had come to the applicant's family home in Bangladesh "seeking him."

Counsel indicated on the Form I-290B that he would submit a brief and/or additional evidence to the AAO within 30 days. On September 17, 2012, the AAO sent a request to counsel to submit the brief and/or additional evidence. The AAO notified counsel to submit the requested document within five business days. As of the date of this decision, no document has been received from counsel. The AAO will deem the record as complete and will adjudicate the matter based on the evidence of record.

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 and 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).

Beyond the decision of the director, the AAO finds that the applicant is not eligible for consideration under section 13 as the applicant has not shown that he performed diplomatic or semi-diplomatic duties as required by 8 C.F.R. § 245.3.¹

The applicant was admitted in G-1 status and served as personal officer (secretary) in the Permanent Mission of Bangladesh to the United Nations, New York, from [REDACTED] 1992 to [REDACTED] 1998. See *Statement from [REDACTED] Permanent Mission of Bangladesh to the United Nations*, dated January 5, 1998. At his adjustment interview on August 5, 2008, the applicant stated that his official title was [REDACTED] and/or [REDACTED]. The applicant indicated that his duties included typing speeches and drafting letters. He also kept track of appointments for the Ambassador and organized the Ambassador's files. The applicant claimed in the same statement that his duties were considered semi-diplomatic in nature because he assisted the Ambassador in his work.

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 [REDACTED] recognize that certain accredited employees or officials admitted to serve within embassies or other diplomatic missions are not "diplomatic" staff. The [REDACTED] refers to such personnel as administrative and technical staff, service staff, or personal servants. *The [REDACTED] 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).

In this case, the AAO finds that the applicant has not demonstrated that he performed diplomatic or semi-diplomatic duties as required by 8 C.F.R. § 245.3. The official statement from the [REDACTED] Mission to the United Nations indicates that the applicant served in the Permanent Mission of [REDACTED] to the United Nations, New York from [REDACTED] 1992 to [REDACTED] 1998 as [REDACTED] and was relieved of his duties on [REDACTED] 1998. *Statement from [REDACTED]*

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the original decision does not identify all of the grounds for denial. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

██████████ *Permanent Mission of ██████████ to the United Nations*, dated January 5, 1998. The statement does not provide specifics of the applicant's duties and responsibility nor does it state that the applicant served as the ██████████ to the Ambassador as claimed by the applicant in his August 5, 2008 statement. The applicant contends that these duties were semi-diplomatic in nature because he assisted the Ambassador in his work.

As indicated above, 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 duties as described by the applicant in his August 5, 2008 statement, relate generally to clerical and/ or administrative duties and not semi-diplomatic duties. The applicant's assertion that he assisted the Ambassador and the Ambassador's diplomatic duties is not substantiated by any other 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 in the ██████████ to the United Nations in New York or that he had authority to represent ██████████ before any state or federal government agencies of the United States or other international governments. Accordingly, the record in this matter is insufficient to establish that the applicant performed diplomatic or semi-diplomatic duties.

The AAO concurs with the director's determination that the applicant failed to establish compelling reasons that prevents his return to ██████████. The applicant's stated reasons for not wanting to return to ██████████ 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 a statement dated June 8, 2004, which he submitted with the Form I-485 application, the applicant stated his reasons for not wanting to return to Bangladesh relates to the education and the general wellbeing of his children after having lived outside of [REDACTED] for a prolonged period of time. The applicant states that the family’s continuous stay in the United States is “necessary and imperative” so that his children are able to achieve their academic objectives. The applicant stated that his children have been away from [REDACTED] for a long time and that his youngest child, who was born in the United States in 1996, has not been to [REDACTED]. He stated that his children have no friends in [REDACTED] that they cannot read or write in the [REDACTED] language, that their entire socialization process has been in the United States, that their primary language is now English and that uprooting them from the United States “will cause them great and irreparable harm in connection with their education, socialization and ability to develop.” The applicant reiterated those same reasons in his August 5, 2008 statements. In addition, the applicant stated that he is concerned for his family’s safety because his children are “Americanized” and will not be able to adjust to a new and foreign culture in [REDACTED] that they will face great hardships in their education and socialization, and be subjected to different treatments that will result in great maladjustment and possible averse psychological and other effects. He further states that his children face the danger of being kidnapped because citizens of [REDACTED] assume that people returning from the United States have money and they kidnap the children of the returnees for ransom.

On appeal, counsel asserts that the applicant will face difficulties in [REDACTED] because the individuals in government during the applicant’s term in New York are no longer in power and so the applicant and his family may have security and safety problems. Counsel claims that investigators have already visited the applicant’s family home in [REDACTED] looking for him. Counsel, however, does not state why the applicant and his family will have problems upon their return. Counsel does not indicate whether the applicant’s concern for the current [REDACTED] government stems from his duties or activities as a secretary in the [REDACTED] Mission to the United Nations in New York.

While the AAO acknowledges that the applicant’s family, especially his children will face some difficulties adjusting to conditions in [REDACTED] after a prolonged period of absence from the country, we note however, that 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.

In this case, the applicant has failed to demonstrate that he and his family will be targeted by the [REDACTED] government as a result of his duties at the country’s Mission to the United Nations in New York. It is also noted that the U.S. State Department has recommended that the applicant’s adjustment of status be denied because the applicant has presented no compelling reasons why he is unable to return to [REDACTED]. See *Interagency Record of Request* (Form I-566), dated June 13, 2011. 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 [REDACTED] 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 [REDACTED]. The applicant has failed to demonstrate that the government of [REDACTED] will not allow his return to that country, or that his past employment as a personal officer (Secretary) in the [REDACTED] Mission to the United Nations in New York, places him and his family in danger and renders them unable to return to [REDACTED]. 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 [REDACTED]. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to [REDACTED], 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.