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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: **SEP 14 2012** Office: WASHINGTON DISTRICT File: [Redacted]
IN RE: Applicant: [Redacted]

PETITION: 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 PETITIONER:

[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 Field Office Director, Washington, D.C. and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will remain denied.

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 not established: that compelling reasons prevent his return to Pakistan; that his adjustment is in the national interest of the United States; and that at the time the applicant applied for adjustment under Section 13, the applicant was still maintaining diplomatic status. *Decision of District Director*, dated July 25, 2008.

On appeal, the applicant asserts that he is eligible to apply for adjustment of status because he initially was admitted as an A-2 nonimmigrant and later changed his status to a G-1 classification, and that at the time he filed his application to adjust status, he was no longer maintaining status as an A-2 nonimmigrant. In addition, the applicant claims that he submitted a Form I-508A, Waiver of Rights, Privileges, Exemptions and Immunities of his G-1 status with the Form I-485 and was therefore not maintaining his G-1 status at the time of filing the Form I-485.¹

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 [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

¹ The applicant indicated at Part 3 of the Notice of Appeal or Motion (Form I-290B) that he is also appealing the denial of applications of his immediate relatives who had submitted applications as the immediate relatives of 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 records, however, do not include a Form I-290B indicating that each of the immediate relatives is filing an appeal. For each adverse decision, an applicant must submit a separate Form I-290B and associated fee. See 8 C.F.R. § 103.3(a)(1). Accordingly, no decision will be issued on the immediate relatives.

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 are 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.

In addition, an applicant for adjustment of status under Section 13 must not be maintaining diplomatic status in order to apply for adjustment under Section 13; thus, his or her status must be terminated prior to the date on which the adjustment application is filed. Pursuant to 8 C.F.R. § 214.2(a), an alien admitted under section 101(a)(15)(A)(ii) of the Act maintains that status "for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status." Therefore, the authority to determine the date of termination of status under section 101(a)(15)(A)(ii) of the Act rests exclusively with the State Department.

Pursuant to 8 C.F.R. § 214.2(a), an alien admitted under section 101(a)(15)(A)(ii) or 101(a)(15)(G)(i) or (ii) of the Act maintains that status "for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status." Thus, the authority to determine the date of termination of status under section 101(a)(15)(A)(i) of the Act rests exclusively with the State Department. An application for adjustment of status under Section 13 filed while the applicant is maintaining diplomatic or semi-diplomatic status is properly denied. However, denial of the application on this ground does not preclude the applicant from filing a new application once the requirement for applying – failure to maintain status – has been met.

In this matter, the applicant was admitted in A-2 nonimmigrant status on January 31, 1998, which was changed to G-1 nonimmigrant status and he served as an Accountant for the Pakistan Mission to the United Nations in New York, until that status was terminated on June 6, 2002. *Letter from [REDACTED] Pakistan Mission to the United Nations, dated June 10, 2002.* Therefore, the applicant maintained legal status in the United States under section 101(a)(15)(A)(ii) of the Act through June 6, 2002. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on April 23, 2002. Thus, when

the applicant filed his Form I-485, on April 23, 2002, he was not eligible to apply for section 13 adjustment of status. Accordingly, the AAO finds that the director properly determined that the applicant was not eligible to apply for adjustment of status pursuant to section 13 of the Act on April 23, 2002.

The applicant's assertions on appeal are erroneous. The applicant's change of status from A-2 to G-1 has no bearing on the duration of his tour of duty. The applicant continued to serve the Pakistan Mission to the United Nations in a diplomatic capacity until the status was terminated on June 6, 2002. Also, the filing of the Form I-508A has no bearing on when the applicant is eligible to file for adjustment of status under Section 13. The evidence of record clearly shows that the applicant continued to maintain his diplomatic status through June 6, 2002, and was not eligible to apply for adjustment of status pursuant to section 13 of the Act on April 23, 2002.

Accordingly, the AAO determines that the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(ii) of the Act, was maintaining that status at the time of his application for adjustment on April 23, 2002, and therefore was not eligible to apply for adjustment under Section 13 at the time of the filing. As the applicant was not statutorily eligible to apply for adjustment of status under section 13 of the Act, the issues of whether the applicant has established compelling reasons that prevent his return to Pakistan and whether his adjustment is in the national interest of the United States will not be addressed.

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.

ORDER: The appeal is dismissed. The application remains denied.