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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**

13



Date: **SEP 19 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. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. A subsequent motion to reopen and reconsider was granted and the AAO's previous decision was affirmed in part and withdrawn in part. A second motion to reopen and reconsider was summarily dismissed as untimely. The matter is now before the AAO on a third motion to reopen and reconsider. The motion will be granted and the application will be 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 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 field office director also noted that the Department of State issued its opinion on February 25, 2008 advising that the applicant's reasons to remain in the United States are not compelling. *Decision of Field Office Director*, dated February 28, 2008.

In an August 11, 2010 decision, the AAO granted the applicant's motion to reopen the matter, reconsidered the evidence submitted, withdrew its previous decision that the applicant did not perform diplomatic or semi-diplomatic duties and affirmed its previous decision to deny the application based on the fact that the applicant did not establish compelling reasons why he cannot return to Pakistan.

On second motion, the AAO determined that the applicant's motion was untimely filed and dismissed the motion.¹ The AAO noted that even if the motion was accepted as timely, that the evidence of record including evidence submitted with the second motion does not establish that the applicant has established compelling reasons within the meaning of Section 13 that prevent him and his family from returning to Pakistan.

On the current motion, counsel for the petitioner asserts that the AAO erred in its decision to dismiss the application on the grounds that (1) the AAO narrowly construed the meaning of "compelling reasons" that renders the applicant unable to return to Pakistan, instead of applying the more broader interpretation of the amended law; and (2) that the AAO did not consider the applicant's fear based on the perception of the applicant and his family as "westernized, pro USA and or spies of USA," who are targeted based on these perceptions. Counsel submitted copies of

¹ Counsel for the applicant in this matter referenced the applicant's four 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) in a cover letter. Counsel, however, did not include a Form I-290B for each of the four immediate relatives. Accordingly, no decision was issued on the four dependent applications.

documents previously submitted into the record, a copy of an excerpt of a report from the Human Rights Commission of Pakistan for 2009, and a copy of an on-line news article on Pakistan, dated August 25, 2010, regarding extrajudicial killings and mob violence in some parts of the country. Counsel claims that the applicant's reason for being unable to return to Pakistan is not based solely on economics and the education of his children in the United States, but is also because the applicant and his family fall into a special group of individuals perceived as "having westernized value" and that they will be "subjected to persecution by the extremists, fundamentalist pro-Taliban, anti US elements and ransom seeker thugs, in Pakistan, for which the government is unwilling or unable to control." Counsel asserts that the applicant and his family have not lived in Pakistan for more than 30 years, that they have adopted western values, and would be viewed as targets of the pro-Taliban people who are involved in kidnapping.

Counsel contends that the benefits of Section 13 are not limited to persons who are made stateless or homeless by changes in the accrediting State but rather has been extended to all individuals who provide compelling reasons for being unable to return to the accrediting nation. Counsel also contends that "whether the fear which is in the mind of the alien and his family is bona fide or not, is a matter of subjective test, and can be determined by the re-opening and providing the alien and his family opportunity of another interview, in which it could be determined whether the fear is bona fide or not."

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. 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.

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 legislative history of Section 13, including the 1981 amendment adding the term "compelling reasons," 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.

What Section 13 requires 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. The general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The AAO finds that a review of the totality of the Section 13 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.

We note that in this matter, the petitioner submitted a sworn statement dated January 25, 2006, indicating the reasons he was unable to return to Pakistan were economic and for the continuing education of his children in the United States. On appeal, counsel for the applicant reiterated the applicant’s reasons for not returning to Pakistan related to his children going to school and colleges in the United States and that a return to Pakistan would jeopardize the education of his children. Only on motion, does counsel now add that the applicant’s compelling reason for being unable to return to Pakistan is the threat of the Taliban and others who participate in kidnapping and making ransom demands, noting that the applicant and his family would be targeted because they would be viewed as being rich, pro-USA, and/or US spies and having western values from having lived in the west.

Upon review of the documents submitted on motion and review of current country conditions in Pakistan, the AAO does not find that the applicant and his family are at greater risk of harm because of the applicant’s past Pakistani government employment. The AAO acknowledges the risks of living in some areas of Pakistan as the turmoil and violence exercised by anti-government factions continues to exist. However, the purpose of Section 13 is to offer protection to those individuals who are unable to return to the State that accredited them due to changes in that State government and because they would be targeted for their past specific role in working for that State. The applicant has not provided evidence that he is at greater risk of harm because of his past government employment, political activities, or other related reason. The fact that the applicant and his family may be perceived as having western values, being rich, being pro-USA, or US spies are not characteristics that preclude the applicant from returning to Pakistan. The applicant’s fear, even if genuine, is not probative evidence that he is at greater risk of harm because of his past government employment, political activities or other related reason. The evidence of record does not establish 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 AAO finds that the applicant has failed to meet his burden of proof demonstrating that there are compelling reasons that prevent his return to Pakistan for the purposes of Section 13. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Pakistan, the question of whether his 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 or she is eligible for adjustment of status. The applicant has failed to meet that burden. Accordingly, the AAO's previous decision is affirmed.

ORDER: The previous decision of the AAO is affirmed. The application is denied.