



U.S. Citizenship
and Immigration
Services

(b)(6)

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

APR 03 2013
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:

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 National Benefits Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron M. Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, National Benefits Center (director). 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 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)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

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 he performed diplomatic or semi-diplomatic duties; that compelling reasons prevent his return to Pakistan; and that his adjustment of status would be in the national interest of the United States. The director also noted that the Department of State issued its opinion on March 15, 2011, recommending that the applicant's adjustment of status be denied because the applicant did not perform diplomatic or semi-diplomatic duties and presents no compelling reasons for wanting to remain in the United States. *Decision of the Director*, dated March 22, 2012.

On appeal, counsel for the applicant asserts that the director erred in denying the applicant's adjustment of status. Counsel asserts that the applicant worked as the [REDACTED] to the Consul General of Pakistan in New York, that the applicant's duties were supportive of the Consul General and his diplomatic duties, and he therefore served in a semi-diplomatic capacity. Counsel also asserts that the applicant has presented compelling reasons why he cannot return to Pakistan and requests that the applicant's adjustment application be approved.

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).

A review of the record shows that the applicant was admitted in A-2 nonimmigrant status on November 12, 2004 and served as the Private Secretary at the Consulate General of Pakistan in New York. The applicant's tenure at the Consulate General of Pakistan in New York was from November 12, 2004 to October 17, 2008. *Statement from Saqib Rauf, Head of Chancery, Consulate General of Pakistan, New York*, dated October 17, 2008. Accordingly, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States under section 101(a)(15)(A)(ii) of the Act but no longer held that status at the time he filed his application for adjustment on January 20, 2009.

The issues before the AAO in the present matter are whether the record establishes that the applicant performed diplomatic or semi-diplomatic duties while employed at the Consulate General of Pakistan in New York and has compelling reasons precluding his return to Pakistan — requirements set forth in section 13(b) of the 1957 Act.

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).

In a July 20, 2009 sworn statement, the applicant indicated that his official title was [REDACTED] at the Consul General of Pakistan in New York. In his April 18, 2012, statement submitted in support of the appeal, the applicant claims that he served as the [REDACTED] to the Consul General of Pakistan in New York. The applicant stated, "At this post I was responsible for assisting the Consul General with his duties developing diplomatic relationships with other

foreign Embassies and Consulate General in New York and the United States. On a regular basis, I assisted the Consul General with preparation of meetings with local government officials and business leaders to promote trade and relations with Pakistan. I was also present during those meetings and served as the main contact person in the organization and implementation of meeting and other events to promote this end.” It is noted that the record does not contain any documentation detailing the applicant’s duties and responsibilities. The record contains a statement, dated October 17, 2008, from [REDACTED] Consulate General of Pakistan, New York, indicating that the applicant served as [REDACTED] and that he has been relieved of his duties in the Consulate General of Pakistan in New York as of October 17, 2008.

On appeal, counsel, asserts that the applicant performed semi-diplomatic duties as a [REDACTED] to the Consul General in the Consulate General of Pakistan, in New York and that he had held similar positions for the Pakistani government in Kuwait, Saudi Arabia and China. Counsel claims that as a personal secretary to the Ambassador and Consul General in his various posts, that the applicant in addition to working directly with the Ambassador or the Consul General with meetings, events, and negotiations, had numerous protocol duties and often spoke directly with the diplomats and officials from the other countries and drafted documents. Counsel also claims that the applicant’s duties as a [REDACTED] were supportive of the Consul General and the Consul General’s diplomatic duties, and therefore are semi-diplomatic in nature.

Although the record shows that the applicant obtained classification under section 101(a)(15)(A)(ii) of the Act, and no longer maintained that status at the time he filed for adjustment of status, the director determined that the applicant did not perform duties of a diplomatic or semi-diplomatic nature. The AAO concurs in this determination. The AAO acknowledges that the terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations and that the standard definitions of terms such as diplomat, diplomatic and diplomacy are varied and broad, and that, in practice, diplomacy may encompass many responsibilities and duties. The AAO finds, however, that 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). Both section 101(a)(15)(A) of the Act and the Vienna Convention recognize that certain accredited employees or officials admitted to serve within embassies or other diplomatic missions are not “diplomatic” staff. The Vienna Convention refers to such personnel as administrative and technical staff, service staff, or personal servants. *The Vienna Convention on Diplomatic Relations, Art. 1* (April 18, 1961), 500 U.N.T.S. 95. These “non-diplomatic” employees are nevertheless afforded the rights and immunities of diplomatic staff. *See Vienna Convention, supra, Art. 37*. In the matter of non-diplomatic employees who are admitted pursuant to section 101(a)(15)(G)(i) of the Act, USCIS must evaluate the position held and its attendant duties to determine whether the applicant is eligible under Section 13.

In this case, the record does not contain any documentation detailing the nature, duties and responsibilities of the applicant at the Consulate General of Pakistan in New York. Counsel’s assertion that the applicant’s duties were supportive of the Consul General and the Consul General’s

diplomatic duties is not supported by the record and thus, not persuasive. The record does not contain documentation to provide sufficient information to enable either the director or the AAO to determine the extent of the applicant's duties and in what capacity the applicant "supported" the Consul General and the Consul General's diplomatic mission. Without the necessary detail describing the applicant's actual responsibilities and duties, the AAO is unable to conclude that the applicant's duties were semi-diplomatic duties rather than clerical or administrative duties. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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 AAO also finds that the applicant's prior services for the Pakistani government in Kuwait, Saudi Arabia, and China which are not supported by any evidence in the record, have no bearing in analyzing his duties at the Consulate General of Pakistan in New York. The applicant has not established that his duties as [REDACTED] at the Consulate General of Pakistan in New York are similar to those he performed in Kuwait, Saudi Arabia, and China. Therefore, upon review of the totality of the evidence of the record in this case, the AAO finds that the applicant has not provided sufficient evidence to establish that his duties and responsibilities at the Consulate General of Pakistan in New York were diplomatic or semi-diplomatic in nature.

The AAO also concurs with the director's determination that the applicant failed to establish compelling reasons that prevent his return to Pakistan. His stated reasons for not wanting to return to Pakistan are not compelling reasons under section 13.

In a December 24, 2008 statement the applicant stated that he does not want to return to Pakistan because of his concern for the safety and wellbeing of his children who have been away from Pakistan for a long period of time, been educated in the English language, and have adjusted to foreign cultures. The applicant fears that his children will "become aliens in their homeland because of cultural gap from many years of grooming in foreign countries and different environment." The applicant also stated that he is concerned for his family's safety because of extremist Islamic and terrorist groups operating in Pakistan.

On appeal, the applicant reiterates his fear of attacks by extremist and terrorist groups in Pakistan who hate the United States and his children who have become "Westernized" will not be able to assimilate into Pakistani culture and will be singled out and targeted. In addition, the applicant fears that he will be targeted for harm by his sister-in-law and her father over a family land dispute.

On appeal, counsel asserts that the applicant's employment at the Consulate General of Pakistan in New York was terminated as a retaliatory measure against him based on false accusations leveled against him, that he was denied a pension and incurred "many enemies both within the Consulate General in New York, the Embassy in Washington, D.C. and in the Foreign Ministry in Pakistan." Counsel claims that some of the applicant's "enemies" have returned to Pakistan and are holding powerful positions in the country, and the applicant fears that these individuals may continue to

retaliate against his family. Counsel also asserted that the applicant is concerned about the Islamic extremists and terrorist groups in Pakistan because of his long residence in the United States and dealings with Western nations, that he fears that his children cannot return and safely live in Pakistan because they have lived in the United States and outside of Pakistan for most of their lives and they will be perceived as American and be targeted for harassment and persecution, and that his youngest children who are girls would not be able to attend school in Pakistan because schools for girls are often attacked or bombed. Counsel further asserts that the applicant has received specific threats from his sister-in-law and her father because of a family land dispute.

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 this case, the AAO acknowledges that the applicant’s children may face some difficulties adjusting to living in Pakistan after a prolonged period of absence. However, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The applicant has submitted no credible evidence to establish that he and his family are at greater risk of harm because of his past Pakistani government employment. The AAO acknowledges the risks of living in certain areas of Pakistan as the turmoil and violence by extremist and other terrorist groups in Pakistan persists. 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. That the applicant and his family may be perceived as having western values are not characteristics that preclude the applicant from returning to Pakistan under Section 13. The evidence of record does not establish that the applicant is unable to return to Pakistan 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 13.¹ 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 he performed diplomatic or semi-diplomatic duties and 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.

¹ It is also noted that the U.S. Department of State has recommended that the applicant's request for adjustment of status be denied because the applicant did not perform diplomatic or semi-diplomatic duties and presents no compelling reasons why he cannot return to Pakistan. *See* Interagency Record of Request (Form I-566).