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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

DATE: Office: NATIONAL BENEFITS CENTER  
DEC 09 2013

FILE:

IN RE: Applicant:

APPLICATION: Application for Status as a Permanent Resident Pursuant to Section 13 of the Immigration and Nationality Act of 1957, Pub. L. No. 85-316, 71 Stat. 642, as amended.

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron M. Rosenberg".

Ron M. Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the 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 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 amended, 95 Stat. 1611, 8 U.S.C. § 1255b, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

The director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent his return to Pakistan. The director also noted that the U.S. Department of State issued its opinion on January 16, 2013, recommending that the applicant's request for adjustment of status in the United States be denied because the applicant had presented no compelling reasons why he cannot return to Pakistan. *See Director's Decision*, dated March 13, 2013.

The director also denied the application of the applicant's spouse [REDACTED] and his daughters [REDACTED], who each submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) under Section 13 as dependent derivatives of the applicant. The director issued separate decisions denying these applications. These dependents have not filed a Form I-290B, Notice of Appeal or Motion appealing the decision. The AAO will not issue a decision for the dependents.

On April 15, 2013, the applicant submitted a Form I-290B, Notice of Appeal or Motion. The applicant states that his daughters all reside in the United States and that he and his spouse would like to remain in the United States with the rest of his family. The applicant asserts "As parents, for our cases to be denied and sent back to Pakistan would be against humanity. We have the right to live with our children and see our grandchildren turn in to wonderful adults." The applicant then requests that the current application be accepted as a family based application because "it is inhumane to separate elderly parents from their children."<sup>1</sup>

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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

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<sup>1</sup> The current application and subsequent appeal before the AAO is based under Section 13 of the Act and the AAO is without jurisdiction to change the application to a family based petition. The applicant can submit a new application based on family petition, if he is eligible.

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.

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 record reflects that the applicant was admitted into the United States in an A-1 nonimmigrant status on December 19, 2002, and that he served as a [REDACTED], California, until his status was terminated by the U.S. Department of State on October 3, 2006. See *Record of Sworn Statement by [REDACTED]* dated December 4, 2009; See also, *Statements from [REDACTED] California*, dated January 5, 2006, and February 14, 2006.<sup>2</sup> Therefore, based on the evidence of record, the applicant maintained diplomatic status in the United States under section 101(a)(15)(A)(i) of the Act through October 3, 2006, when his status was terminated by the U.S. Department of State. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on April 21, 2006. Thus, when the applicant filed his Form I-485, on April 21, 2006, he was not eligible to apply for section 13 adjustment of status as he was still maintaining his diplomatic status in the United States. Accordingly, the applicant was not eligible to apply for adjustment of status under Section 13 of the Act on April 21, 2006.

Based upon a *de novo* review of the record, the AAO finds that the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(i) of the Act, that the applicant was maintaining that status at the time he filed his application for adjustment on April 21, 2006, and that the applicant was therefore not eligible to apply for adjustment under Section 13 at the time of the filing.

The AAO also concurs with the director's determination that the applicant had failed to establish compelling reasons that prevent his return to Pakistan.

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 an undated statement the applicant submitted with his application, the applicant indicated that he does not want to return to Pakistan because his daughters, who were raised and educated in U.K., China and the United States, would be forced to adhere to the customs of his native village in Pakistan. He fears that his daughters would be forced to "marry with the nearest blood relations on arranged marriage basis" and that most of the members of his tribe are illiterate. The applicant states that his daughters are not ready to follow the customs of his village and are not willing to marry illiterate men. The applicant fears that his tribe will "create a lot of problems for my daughters."

At his adjustment of status interview on December 4, 2009, the applicant stated under oath before an immigration officer that the compelling reasons he does not want to return to Pakistan are that his daughters are studying in the United States, they have been residing in the United States since 2002 and are very much part of the system and that they rely on the system for "their progression." The applicant

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<sup>2</sup> The statement indicates that the applicant joined the [REDACTED] California during the second week of May 2002 and that his tenure at the [REDACTED] is likely to finish by the end of May 2006. The February 14, 2006 statement indicates that the applicant, [REDACTED] retired from the government service on October 14, 2006.

also states that in Pakistan he belongs to a feudal system which would require not only his daughters to give up their education but also for them to observe complete "Purdah" along with having arranged marriage. The applicant further states that the conditions in Pakistan are worsening and that he and his family would like to remain in the United States for their security. On appeal, the applicant states that he wants to remain in the United States for family unity because his daughters are now married to United States citizens, have adjusted their status to that of lawful residents and are now residing in the United States permanently.

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 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 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.

The AAO has reviewed the applicant's statements, and country condition information submitted into the record, and finds the evidence insufficient to establish compelling reasons why the applicant cannot return to Pakistan. The AAO notes the applicant's desire to remain in the United States for the continued education and the overall wellbeing of his family, however, such reasons are not considered compelling within the meaning of Section 13. Also, the applicant's desire to create a better life for his family and to shield his daughters from the feudal system in existence in his village in Pakistan is not considered compelling reasons within the requirements of Section 13. As indicated above, 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. In this matter, the AAO finds the record insufficient to establish that the applicant in his role as a returning diplomat would be at greater risk of harm in the hands of the government Pakistan or other entities there because of his past government employment, political activities or other related reason. The evidence of record in this case 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 notes the difficulties the applicant's children may encounter in adjusting to living in Pakistan after a prolonged period of absence from the country. However, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. Likewise, the general insecurity in Pakistan is not a sufficiently compelling reason that precludes the applicant from returning to his country as the applicant has not established that he will be personally targeted for harm based on his past government employment. It is also noted that the U.S. Department of State issued its opinion recommending that the applicant's request for adjustment of status under Section 13 be denied because the applicant had not established compelling reasons that preclude his return to Pakistan.<sup>3</sup>

Accordingly, the AAO finds that the applicant has failed to meet his burden of proof in 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. 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> See Form I-566, Interagency Record of Request.