

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **DEC 24 2013** Office: NATIONAL BENEFITS CENTER FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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 (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 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 the immediate relative of 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 establish compelling reasons that prevent his return to Pakistan. The director also noted that the U.S. Department of State issued its opinion February 9, 2013, recommending that the applicant's request for adjustment of status be denied because the applicant has presented no compelling reasons why he is unable to return to Pakistan. *Decision of the Director*, dated March 18, 2013.

On appeal, counsel for the applicant asserts that the director erred in denying the application for adjustment of status. Counsel contends that the applicant had established compelling reason why the applicant should "be granted adjustment of status within the United States." *Form I-290B, Notice of Appeal or Motion*, dated April 18, 2013. Counsel submits a brief and country condition information on Pakistan in support of the appeal.

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 Attorney General 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 Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

8 U.S.C. § 1255(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).

A review of the record establishes the applicant's eligibility for consideration under Section 13. The applicant was admitted in A-1 nonimmigrant status on April 30, 1980, as a derivative dependent child of his father, [REDACTED] a former diplomat, who served as [REDACTED] for the Embassy of Pakistan in Washington, D.C. until his status was terminated by the U.S. Department of State on July 5, 1986. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status on October 19, 2010. Therefore, as per the requirements of Section 13, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(i) of the Act as a dependent of his father but no longer held that status at the time of his application for adjustment of status on October 19, 2010.

As a result, the issues before the AAO in the present case are, therefore, whether the record establishes that the applicant has compelling reasons that prevent his return to Pakistan and that his adjustment of status would serve U.S. national interests – 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).

At his adjustment of status interview on August 21, 2012, the applicant provided the following under oath as compelling reasons why he cannot return to Pakistan:

“First, I don’t fit in anymore and it is dangerous for my son. I’m more Americanized...if people heard me they would know that I came from overseas. People over there are becoming more and more extreme...I need to take care of my son. I rather have him here than over there. He would definitely be targeted because he speaks nothing but English. My mom and everybody is coming over here. So there wouldn’t be anyone to go back to over there.”

At the same interview, counsel for the applicant submitted a statement stating that the applicant had resided in the United States since 1979, that it is likely that the applicant would be considered or mistaken for a “Westerner” upon returning to Pakistan and that the applicant would be at risk because of his inability to speak the Pakistani language, Urdu. Counsel also stated that the military government that was in power when the applicant’s father served as a diplomat is no longer the governing party and that the political instability in Pakistan “places the applicant at risk.”

On appeal, counsel asserts that the applicant and his family will be targeted by extremist groups for being “Americanized.” Citing the U.S. Department of State’s Travel Warnings for Pakistan, counsel states that the presence of Al-Qaida, Taliban elements and indigenous militant sectarian groups poses a potential danger to the applicant and his family because of their long residence in the United States since 1979, the perception from these groups that the applicant is “Westernized” and that the applicant’s son is a United States citizen.

The AAO has reviewed the applicant’s statements, counsel’s assertions on appeal and country condition information submitted in the record and finds them insufficient to establish that the applicant has compelling reasons that prevent his return to Pakistan. As discussed 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.

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 reasons 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. 421, 433, fn. 12 (1987). The 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.

In this case, the AAO has reviewed the applicant’s statements, and the documents submitted by the applicant in support of the appeal. The AAO acknowledges the violence and the lack of security in Pakistan caused in part by political instability and by terrorist and other extremist groups operating in Pakistan and that 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 applicant has provided no evidence to establish that he and his family would be targeted by these groups or by the current government of Pakistan because of his father’s past employment with the government of Pakistan. The applicant has provided no evidence to establish that diplomats who served the government on Pakistan during the 1980s and their families are being targeted for harm by the current government of Pakistan.

The AAO also acknowledges the applicant’s desire to remain in the United States, however, the applicant has failed to demonstrate that he is unable to return to Pakistan based on compelling reasons related 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. The AAO further acknowledges the difficulties the applicant and his family 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. The applicant has provided no credible and probative evidence to establish that he and his family are at greater risk of harm because of his father’s past government employment, political activities, or other related reason. The applicant’s desire to create better living conditions for his family in the United States is not considered compelling reasons that preclude his return to Pakistan under Section 13 of the Act. 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. It is also noted, that the U.S. Department of State has recommended that the applicant’s adjustment of status be denied because the applicant has not presented compelling reasons that prevent his return to Pakistan. *See* Interagency Record of Request (Form I-566).

Counsel’s claim that the applicant and his family will be targeted by extremist groups in Pakistan because of the groups’ perception of the applicant as “Americanized” or “Westernized,” is not substantiated by the record. Besides, the term “compelling reasons” relates 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. Being perceived as “Westernized” or “Americanized” by terrorist or extremist groups operating in Pakistan is not considered compelling reasons within the meaning of Section 13. 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 eligibility for relief under section 13 is limited and ineligibility for section 13 relief does not preclude the applicant from pursuing other benefits provided under the immigration laws of the United States. 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 13.¹ 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 there are compelling reasons that preclude 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 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 has presented no compelling reasons why he cannot return to Pakistan. *See* Interagency Record of Request (Form I-566).