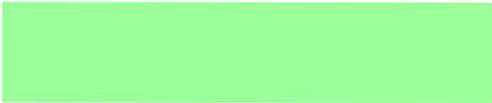




U.S. Citizenship
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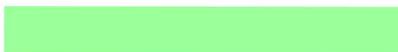
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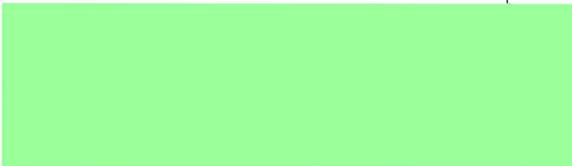
FILE: 

FEB 13 2013
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:

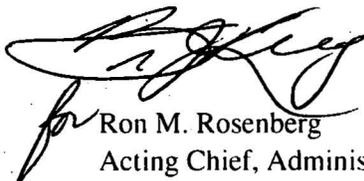


INSTRUCTIONS:

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,



Ron M. Rosenberg
Acting 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 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 application for adjustment of status after determining that the applicant had failed to demonstrate that he performed diplomatic or semi-diplomatic duties for the Consulate General of Pakistan in Chicago, Illinois, failed to present compelling reasons that prevent his return to Pakistan, and failed to demonstrate that his adjustment of status is in the national interest of the United States. The director also noted that the U.S. Department of State issued its opinion on September 6, 2012 recommending that the applicant's request be denied because the hardship that the applicant claims for not wanting to return to Pakistan is not related to diplomatic assignment and that the applicant failed to present compelling reasons why he is unable to return to Pakistan.

On appeal, counsel for the applicant asserts that the director erred in his decision. Counsel claims that the applicant performed diplomatic duties or semi-diplomatic duties for the Consulate General of Pakistan in Chicago and that the applicant has compelling reasons why he is unable to return to Pakistan. Counsel submits a brief 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 [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).

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 first admitted in A-1 nonimmigrant status in November 2006. That status was later changed to A-2 in 2008 by the U.S. Department of State, Office of Protocol. In both cases, the applicant served as [REDACTED] for the Consulate General of Pakistan in Chicago, Illinois from 2006 until the end of his tour of duty in December 2010. At his interview on August 31, 2010, the applicant stated under oath that his duties were arranging business travel and meetings between Pakistani and United States businessmen.

The record shows that the applicant was admitted under section 101(a)(15)(A)(i) of the Act, and later changed to section A-2 non-immigrant but the director found that the applicant did not perform duties of a diplomatic or semi-diplomatic nature. The AAO does not concur. 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). Liaising between Pakistani and United States business people and arranging business travels between individual from Pakistan and United States to promote business and trade between the two countries is an essential component of diplomatic representation. The evidence demonstrates that the applicant acted as a representative of the Consulate General of Pakistan in charge of coordinating trade and business between United States and Pakistani businessmen. A change in the status of the

applicant's visa from A-1 visa to A-2 did not alter his duties for the consulate. The information in the record is sufficient to show that the applicant performed semi-diplomatic duties for the Consulate General of Pakistan in Chicago. On appeal, counsel claims that the applicant's duties at the Consulate General of Pakistan in Chicago are diplomatic in nature because the applicant arranged meetings between diplomats and the businessmen, advised the Pakistani government on issues of trade and commerce and had access to classified information due to his position. Counsel however, does not provide any probative evidence in support of his assertions. The applicant's sworn statement on August 31, 2010 is sufficient to establish that his duties at the Consulate General of Pakistan in Chicago were semi-diplomatic in nature. Accordingly, the determination by the director that the applicant did not perform diplomatic or semi-diplomatic duties is withdrawn.

Nevertheless, the AAO concurs with the director's determination that the applicant has failed to establish compelling reasons that prevent his return to Pakistan. The applicant's stated reasons for not returning to Pakistan are not compelling reasons under Section 13. 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.

On appeal, counsel claims that the applicant could not return to Pakistan because of "[the applicant's] employment with the government of Pakistan in Chicago, change of regime in Pakistan and political

turmoil there. In addition, shortly after [the applicant's] departure from Pakistan, his neighbor took over his property on allegations that he was a spy for the previous Pakistani regime." Counsel also claims that the applicant did not return to Pakistan after the termination of his tour of duties because members of his community would harass him and the government of Pakistan will prosecute him for failing to return to Pakistan timely. At his interview on August 31, 2010, the applicant stated under oath that the reasons he is unable to return to Pakistan are because of his children's education, employment and safety. The applicant also cited the problem with Taliban and Al-Qaida in Pakistan as a reason he does not want to return to the country. In a May 5, 2011 statement signed by [REDACTED] the applicant indicated that he wants to remain in the United States so that his children would obtain "excellent" education. He indicated other reasons as insecurity and danger in Pakistan caused by terrorist groups such as Al-Qaida, the Taliban and other fundamentalist groups, as well as daily bomb blasts, strikes and agitation. The applicant stated that returning to Pakistan under these conditions would "put our lives in danger and spoil the career of our kids."

The AAO acknowledges the reasons provided by the applicant for not wanting to return to Pakistan, however, such reasons are not considered compelling within the meaning of section 13. The AAO also acknowledges the risks of living in certain 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 evidence does not show 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. The applicant has provided no probative evidence showing that he is at greater risk of harm because of his past government employment, political activities or other related reason. The general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. It is also noted that the U.S. Department of State has objected to the applicant being granted adjustment of status and indicated that it does not believe that compelling reasons prevent the applicant's return to Pakistan. *See* Interagency Record of Request (Form I-566). The AAO therefore concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to Pakistan. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Pakistan, the question of whether 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 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.