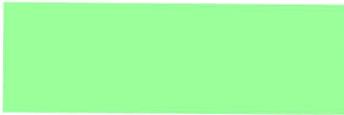




U.S. Citizenship
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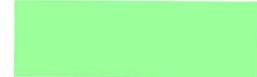
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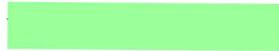
DATE: Office: NATIONAL BENEFITS CENTER

JUL 16 2013

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: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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 the 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,

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 her 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 district director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent her return to Pakistan. The director also noted that the U.S. Department of State issued its opinion on January 5, 2013 recommending that the applicant's request for adjustment of status be denied because the applicant failed to present compelling reasons why she is unable to return to Pakistan. *Decision of Director*, dated January 31, 2013.

On appeal, the applicant states that her family belongs to the [redacted] area which is a base station for a religious terrorist – [redacted], and that they are afraid of attacks by this group. The applicant cited insecurity throughout Pakistan caused by terrorist or extremist groups that operate with impunity and the government's inability or unwillingness to contain these groups as another reason she and are family are unwilling to return to Pakistan. The applicant also declares her desire to remain in the United States so that her children, especially her female children would complete their studies in the United States without interference from extremist groups that do not believe in the education of females in Pakistan. The applicant asserts that country conditions reports for Pakistan demonstrate that that country had failed to address the issues of terrorism, kidnapping, sectarian and religious extremism and gender educational extortion.

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). 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).

The AAO notes that Section 13 requires only that an applicant demonstrate that there are "compelling reasons demonstrating . . . that the alien is unable to return to the *country represented by the government which accredited the alien* . . ." (emphasis added). However, a review of the record shows that the applicant has failed to establish eligibility for consideration under Section 13. The record shows that the applicant last entered the United States in A-2 nonimmigrant status on July 31, 2010 and served thereafter as a personal assistant to the press attaché at the [redacted] until her employment was terminated on or about February 28, 2012. See *Sworn Statement of Riffat Rukhsana*, dated June 25, 2012. A U.S. Department of State Notification of Termination indicated that the applicant's A-2 status was terminated on January 31, 2012. Consequently, the director's decision to deny the applicant's adjustment application on the basis that she failed to demonstrate compelling reasons preventing her return to Pakistan was erroneous and is withdrawn.

The AAO notes that the applicant has not shown that she performed diplomatic or semi-diplomatic duties as required by 8 C.F.R. § 245.3. As stated previously, the applicant was admitted in A-2 nonimmigrant status and she served as a personal assistant to the press attaché at the [REDACTED] until January or February 2012. The record does not contain an official description of the applicant's duties at the embassy, however, in a personal statement dated February 22, 2012 and on the Form I-566, Interagency Record or Request, the applicant listed her job title as PA/Stenotypist. The U.S. Department of State, Office of Foreign Missions listed the applicant's functional title as "Administrative and Technical." In her June 25, 2012 Sworn Statement before an immigration officer, the applicant indicated her official title as Personal Assistant to Press Attaché. She stated that her duties were to "take care of [the press attaché's] appointments and meetings with journalists and media and to coordinate the arrival of VIPs from Pakistan." The applicant claimed that these duties were semi-diplomatic in nature. *Sworn Statement of Riffat Rukhsana*, dated June 25, 2012.

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). The applicant served as an administrative or technical staff at the [REDACTED] with apparently no representative duties or authority on behalf of the government that accredited her. The applicant's assertion in her statement of June 25, 2012 that her service to the press attaché by taking care of his appointments, scheduling meetings with journalists and coordinating the arrival of VIPs from Pakistan qualified as semi-diplomatic duties is not substantiated by any other evidence. 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 record demonstrates that the applicant's duties as stated by the applicant herself and as officially designated by the U.S. Department of State Office of Foreign Missions are administrative or technical duties. The record does not establish that the applicant had any formal advisory or decision-making role at [REDACTED] or that she represented the Pakistani government before the media or in any other capacity. Consequently, the applicant has failed to demonstrate that, she was entrusted with duties of a diplomatic or semi-diplomatic nature.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. She has failed to establish that she performed diplomatic or semi-diplomatic duties. As the applicant has failed to establish her eligibility for adjustment of status under section 13, the issue of whether she has established compelling reasons preventing her return to Pakistan or whether her adjustment of status will be in the national interest of the United States will not be discussed. Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that 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.