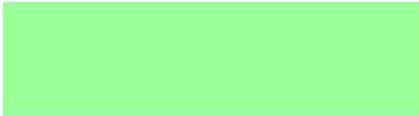


(b)(6)

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



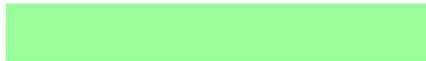
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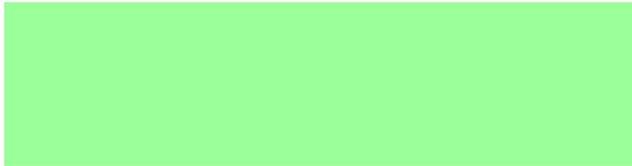


IN RE: Applicant:



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
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 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 26, 2013 recommending that the applicant's request for adjustment of status in the United States be denied because the applicant presented no compelling reasons preventing his return to Pakistan. *See Director's Decision*, dated March 11, 2013.

The director also denied the application of the applicant's spouse [REDACTED], his son [REDACTED], his daughter [REDACTED] and his son [REDACTED] who each submitted an Application for Status as Permanent Resident (Form I-485) seeking to adjust status under Section 13 as dependent derivatives of the applicant. The director issued separate decisions denying these applications. These dependents each filed a separate Form I-290B, Notice of Appeal. The AAO will issue a separate decision for each of the dependents.

On April 11, 2013, counsel for the applicant submitted a Form I-290B, Notice of Appeal or Motion, and a brief asserting in essence that the applicant has established compelling reasons why he cannot return to Pakistan, that the director's decisions are "arbitrary, capricious and violate law" and that "legislative history is unlawfully and improperly relied upon to contradict words of statute."

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.

A review of the record establishes the applicant's eligibility for consideration under Section 13 of the 1957 Act. The applicant was admitted into the United States on September 30, 1999, in an A-1 nonimmigrant status and served as [REDACTED] Embassy of Pakistan in Washington, D.C. from October 1999 until July 22, 2003, when he resigned from his position at the Embassy. *See Record of Sworn Statement by [REDACTED]* dated March 16, 2005. The applicant submitted evidence in the record that shows that the applicant's duties – first as the [REDACTED] – were in support of the Ambassador's diplomatic duties. The AAO finds that the applicant's duties were therefore Semi-Diplomatic in nature. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on March 15, 2004. Therefore, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(i) of the Act but no longer held that status at the time of his application for adjustment of status on March 15, 2004.

The issues before the AAO in the present case are, therefore, whether the record establishes that the applicant has compelling reasons that preclude 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).

In a Sworn Statement dated March 16, 2005, the applicant indicated the following as the compelling reasons that prevent his return to Pakistan: "loss of diplomatic career for denial, unfairly of, medical leave; I need children' education, treatment of my son – a grad student and launching of my business." In an undated personal statement the applicant submitted in support of the Section 13 application, the applicant indicated the reasons why he does not want to return to Pakistan as his desire for his children to complete their education in the United States, his son to continue to receive medical treatment in the United States, his children cannot read or write the Pakistani language, Urdu, and "it would have been

unfair to them to deny them the opportunity for the best education on the globe . . . their return to Pakistan would have forced them to study in different language – Urdu when they have been proven to be hardworking and responsible citizens here in the USA.” The applicant also indicated that he has been deprived of any pension and gratuity benefits he otherwise qualified for because he was unfairly forced to resign his position at the Embassy.

On appeal, the applicant asserts that the educational and social issues his children will face in Pakistan are compelling reasons why he cannot return to Pakistan. The applicant also lists as compelling reason the continuing health problem of his son, [REDACTED] who is receiving medical treatment in the United States, which he claims will not be available to him in Pakistan and [REDACTED] marriage to a [REDACTED] which would put him and his family in great danger because he married “what fundamentalists consider an infidel.” The applicant states that his children have been away from Pakistan for a long period of time, that they are “completely illiterate in Urdu” and that they would be “completely unemployable in any job in Pakistan.” The applicant also states that the political, cultural and religious situation in Pakistan is poor and rapidly deteriorating, that his children who have been raised outside of Pakistan would be recognized as being “Americans” and they would be in constant danger of kidnapping on the assumption that they and their family are rich and could pay substantial ransoms. The applicant claims that his children have been brought up in a Westernized, liberal and secular household and that they will have difficulty residing in Pakistan that is “controlled by religious and political extremists.”

Furthermore, the applicant claims that he has been persecuted by the government of Pakistan because shortly after he assumed his position at the Embassy, the military overtook the civilian-elected government and he was given duties far beneath his experience and abilities because he was associated with the overthrown government. The applicant also claims that the government of Pakistan denied him medical leave which he was entitled to because they believe that his stay in the United States would “jeopardize national [Pakistani] security,” he was forced to resign his position at the Embassy and the government has refused to award him his pension, accrued leave and other benefits. The applicant submitted various country condition reports in support of his appeal.

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.

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 violent situation and lack of security in Pakistan caused in part by the political instability and by terrorist and other extremist groups operating in Pakistan and 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 not provided any evidence to establish that he and his family would be targeted by these groups or by the current government of Pakistan because of his past employment with the Pakistani government.

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’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. As indicated before, the applicant has provided no credible evidence to establish that he and his family are at greater risk of harm because of his past government employment, political activities, or other related reason. The applicant’s desire to create better educational and financial opportunities for his family in the United States are 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.

The AAO notes that the applicant’s claim that he was given duties that were “beneath my experience and abilities” because of political reasons is not substantiated by the record and is inconsistent with a July 26, 2010 letter from [REDACTED] Washington, D.C. In that letter, [REDACTED] stated that the applicant served as [REDACTED] from October 1999 to August 2000 and as [REDACTED] with overall financial and administrative responsibilities for the Embassy including the construction and furnishing of their new Chancery building in Washington D.C. The duties and responsibilities enumerated in [REDACTED] letter are inconsistent with the applicant’s claim that he was assigned to duties that were beneath his experience and abilities because of his political affiliation. The letter strongly suggests that the applicant was

promoted and given more responsibilities during his tenure at the [REDACTED]

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.* The record does not contain any evidence to substantiate the applicant's claim that he was "persecuted" by the military government in Pakistan because of his prior affiliation with the civilian administration that was overthrown by the military. 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 notes that the military government of Pakistan, which the applicant claims persecuted him, has long been replaced by a democratically elected president in the recently completed election. The applicant has provided no evidence to demonstrate that he will be targeted by the current government of Pakistan because of his prior duties and responsibilities at the Embassy of Pakistan. The record is insufficient to establish that the applicant in his role as a returning diplomat would be at greater risk of harm because of his past government employment, political activities or other related reason.

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).