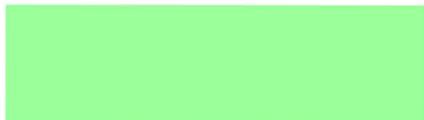


(b)(6)

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



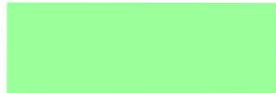
U.S. Citizenship
and Immigration
Services



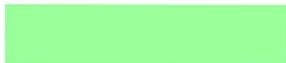
DATE: Office: NATIONAL BENEFITS CENTER

FILE:

JUL 31 2013

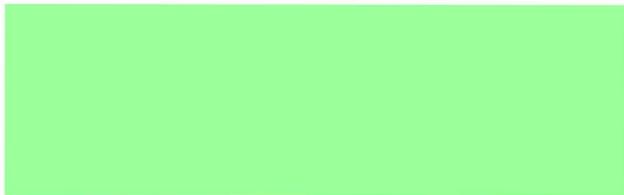


IN RE: Applicant:



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 a 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 compelling reasons prevent his return to Pakistan. *See Director's Decision*, dated February 20, 2013.

The director also denied the applications of the applicant's spouse, [REDACTED] his daughter, [REDACTED] his daughter [REDACTED] his son, [REDACTED] and his daughter, [REDACTED] who each submitted a Form I-485, Application to Register Permanent Residence or Adjust Status, seeking to adjust status under Section 13 as dependent derivatives of the applicant. The director issued separate decisions denying these applications. Although counsel referenced the denial of the family members' applications on appeal, the record does not include a Form I-290B, Notice of Appeal or Motion, for each of the family members as required by the regulations. Pursuant to 8 C.F.R. § 103.3(a)(1), for each adverse decision, an applicant must submit a separate Form I-290B and associated fee. Accordingly, only the applicant's appeal will be addressed by the AAO.

On April 18, 2013, counsel for the applicant submitted a supplemental brief in which he asserted that the applicant and his family cannot return and safely live in Pakistan because they have lived in the United States for over six years. Counsel states that the applicant and his family are completely Westernized and "if they were to return to Pakistan they would be seen as American, and targeted for harassment and persecution" from "the moment they walk out onto the street and the Pakistani government will not be able to protect them."

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 applicant testified at his April 8, 2009 adjustment of status interview that he was admitted into the United States on November 29, 2006 in a G-1 nonimmigrant status and served as a [REDACTED] until October 3, 2007, when his status was terminated due to the expiration of his contract. According to the applicant's sworn statement, his duties included "working as a secretary with different officers to maintain" and to "keep correspondence with the United Nations with the headquarters." At the interview, the applicant described his duties as "some diplomatic work or some administrative" and that while he was not considered to be a "high-ranking diplomat" the duties of his position were considered to be "both semi-diplomatic and diplomatic." The applicant's status at the [REDACTED] was terminated on October 3, 2007 and he filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on December 5, 2007. 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)(ii) of the Act but no longer held that status at the time he filed his application for adjustment of status on December 5, 2007 and is eligible for consideration under Section 13 of the 1957 Act.

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).

At his April 8, 2009 interview, the applicant stated that “Basically, I don’t want to go back to Pakistan because of my children. I have to stay with my children. They are getting their education over here. If they go back to Pakistan their whole future will be ruin[ed].” He stated that his children do not know how to read and write Urdu, that there is no good education in Pakistan, and that education “over here [in the United States] is very good and it is my wish that they [his children] should get their education over here.” When asked to state any compelling reasons to establish that he is unable to return to Pakistan, the applicant stated that the reason he doesn’t want to go back to Pakistan is because his children are in the United States and that he is afraid that if he takes them back, somebody may “kidnap them for money.” He also stated that “They [elements in Pakistan] are against America. Whoever, go back from America they kill them and they kidnap their kids for money. In my country, the system is not like that somebody can go back and stay there, or live there. The children themselves they don’t want to go back there. This is the main reason.” The applicant also stated that there is “no electricity and there is no water, there is no food” and that the reason he wants his children to remain is the United States is that he doesn’t have a source of income in Pakistan to provide them with the things they are getting in the United States.

On appeal, counsel for the applicant states that the applicant has worked all over the world for the government of Pakistan including lengthy postings in the United States. Counsel asserts that the applicant and his family can demonstrate that they “cannot return to Pakistan, not that they simply do not want to return to Pakistan, but as a direct result of their lengthy presence in the United States with their family.” He states that there is “a very strong Anti-American sentiment in Pakistan and Fundamentalist groups’ fuel hatred of Americans and those perceived as ‘Western.’” And that [P]ublic hatred for Americans in Pakistan has already resulted in several attacks and even kidnappings and deaths.” Counsel asserts that the applicants “Westernized demeanor and dress, if they were to return to Pakistan they would be targeted from the moment they walk out onto the street and the Pakistani government will not be able to protect them.” Counsel does not submit any evidence in support of his assertions.

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, counsel’s assertions on appeal, and counsel’s brief 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 parts of 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 due to his past employment with the Pakistani government.

The AAO 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, or other related reason. The applicant’s desire to create better educational and financial opportunities for his family in the United States are not compelling reasons that preclude the applicant from returning to Pakistan under Section 13. 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 does not find evidence in the record to establish that individuals who served the government of Pakistan such as the applicant have been targeted or would be targeted by the government of Pakistan. 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 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).