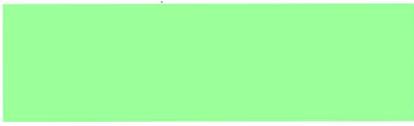




U.S. Citizenship
and Immigration
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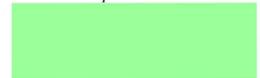
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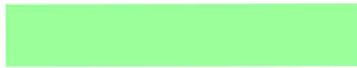
DATE: Office: NATIONAL BENEFITS CENTER

MAR 20 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 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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)(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 compelling reasons that prevent his return to Pakistan. The director also noted that the U.S. Department of State issued its opinion on April 19, 2012 recommending that the applicant's request for adjustment of status in the United States be denied because the applicant presented no compelling reasons why he cannot return to Pakistan.

On appeal, the applicant submitted an undated statement citing the present terrorist condition in Pakistan and the presence of Taliban supporters in the area of the country where he comes from as compelling reasons why he does not want to return to Pakistan

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. He was admitted into the United States in 1999 in an A-1 nonimmigrant status to work for the Consulate General of Pakistan in New York. The applicant worked as a consular attaché for the Consulate General of Pakistan in New York from July 5, 1999 to June 15, 2002 when he retired from service. *Letter from Yasir Iqbal Butt, Head of Chancery, Consulate General of Pakistan, New York, New York*, dated November 21, 2012. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on May 16, 2006. Therefore, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic or semi-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 May 16, 2006.

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 the U.S. national interest – 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 before an immigration official in New York, New York, on December 6, 2006, the applicant stated that he does not believe that he or any member of his family would be persecuted if they returned to Pakistan. He stated however, that he is concerned about the lack of safety in the country, particularly kidnapping, when the kidnappers know a person is from the United States. On appeal, the applicant cites the present terrorism condition in Pakistan that is directed towards people who served in the United States or other Western countries. The applicant indicated that he belongs to a moderate and liberal Sunni (Sufi) Muslim sect and that they are targeted by Wahabis who are supporters of the Taliban. The applicant claims that the area of the country where he comes from is dominated by Taliban supporters.

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 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 applicant has failed to provide credible and probative evidence to establish that he and his family would be targeted because of his religion if he returned to Pakistan. The applicant has failed to provide evidence that he will be targeted due to his past government employment, political activities or other reasons. Thus, the AAO finds that the record is deficient in establishing a specific threat against the applicant or his family or that the applicant would be subject to persecution because of his Sufi Muslim sect. 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 notes the current country condition in Pakistan is marred with violence from extremist groups and that there are appreciable risks for people living in certain areas of Pakistan. 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 provided no credible evidence to establish that he is at greater risk of harm because of his past government employment, political activities, or other related reason. The applicant has not credibly established that he and his family would be targeted for harm based on his religion. The evidence of record does not show that the applicant is unable to return because of any action or inaction on the part of the government of Pakistan or other political entity there as required under Section 13.¹ It is also noted that the U.S. Department of State has recommended that the applicant’s adjustment application be denied because he has presented no compelling reasons that prevent his return to Pakistan. See Interagency Record of Request (Form I-566).

¹ The record reflects that the applicant traveled to Pakistan in July 2008 for 45 days and in October 2009 for 28. The applicant has reported no incident of threats or harm against him when he went back to Pakistan.

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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 precludes 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.