



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAY 09 2013** e: NATIONAL BENEFITS CENTER

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:

[Redacted]

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)(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 compelling reasons that prevent his return to Pakistan. The director also noted that the U.S. Department of State issued its opinion on November 30, 2012 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 January 9, 2013.

The applicant’s spouse [REDACTED], his son [REDACTED], his daughter [REDACTED] and his daughter [REDACTED] each submitted an Application for Status as Permanent Resident (Form I-485) seeking to adjust status under Section 13 as dependents 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 January 31, 2013, counsel for the applicant submitted a Form I-290B, Notice of Appeal or Motion.¹ Counsel asserts that the director “misapplied and misinterpreted the law” in finding that there are insufficient compelling circumstances preventing the applicant from returning 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

¹ Counsel indicated at part 2B that his brief and/or additional evidence will be submitted to the AAO within 30 days. No brief and/or additional evidence has been submitted by counsel and none are in the record. The AAO will regard the record as complete and will adjudicate the case based on the evidence of record.

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 August 13, 2006, in an A-2 nonimmigrant status as the Senior Auditor for the [redacted] until termination of his duties December 11, 2009 due to voluntary retirement. [redacted]

[redacted] dated December 16, 2009.

As the senior auditor, the applicant's duties includes monitoring the Diplomatic Mission's "Special Funds" account created for the purpose of hiring lobbyist firms in the United States and other public relations entities for safeguarding the interests of Pakistan and the United States. In this capacity, the applicant worked closely with the [redacted] in support of the Ambassador's diplomatic duties. The applicant's duties are therefore Semi-Diplomatic in nature. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on January 5, 2010. 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 of his application for adjustment of status on January 5, 2010.

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 adjustment interview on August 23, 2010, the applicant stated under oath before an immigration officer that he and his family do not want to return to Pakistan "Due to non-stability atmosphere of

government of Pakistan.” The applicant also stated “I got retirement to serve the United States government. My children will also do the good job after completing their studies in the United States.” In a statement dated January 1, 2010, which the applicant submitted in support of his section 13 application, the applicant stated that his children are studying in the United States, that he has always wanted his children to acquire the highest level of education possible, which is an opportunity for him and his family to develop personally and professionally. The applicant also stated that Pakistan is “mired by extremism and terrorism which has consumed most of the youth inspiring to do better in life.” The applicant further stated that he would like for his children to acquire their education in the United States and find opportunities here that would enable them to contribute both financially and in terms of service to the government of the United States.

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 AAO acknowledges that the applicant’s children may face some difficulties 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. The applicant has submitted no credible evidence to establish that he and his family are at greater risk of harm because of his past employment for the government of Pakistan. The AAO acknowledges 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 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 applicant's desire to create better educational and financial opportunities for his family in the United States are not characteristics 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 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 13.² 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.

² 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).