



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: Office: WASHINGTON DISTRICT FILE:

MAY 24 2013

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

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,

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 Acting Field Office Director, Washington, D.C. and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO will be affirmed in part and withdrawn in part. The application will remain denied.

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 acting field office director denied the Form I-485, Application to Register Permanent Residence or Adjust Status after determining that the applicant had failed to demonstrate that he performed diplomatic or semi-diplomatic duties; that compelling reasons prevent his return to Pakistan; or that his adjustment would be in the national interest of the United States. The acting field office director also noted that the Department of State issued its opinion on March 15, 2011, recommending that the applicant's adjustment of status to that of a lawful permanent resident be denied because the applicant did not perform diplomatic or semi-diplomatic duties and that he has failed to provide compelling reasons that prevent his return to Pakistan. *Decision of the Acting Field Office Director*, dated April 20, 2011.

The AAO affirmed the acting field office director's April 20, 2011 decision denying the application.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision

On motion, counsel for the applicant asserts that the applicant served as an [REDACTED] at the [REDACTED] in Washington, D.C. Counsel contends that the applicant's position and duties were in direct support of "those who engage in negotiations or representations." In support, counsel submits a copy of the request from the [REDACTED], Pakistan to the [REDACTED], Pakistan, requesting the issuance of visas to the applicant and his family. In that request, the applicant's position was listed as [REDACTED] Military Accounts Department. Counsel also submits a letter from the [REDACTED] in Washington, D.C. to the vice-president, [REDACTED] Washington, D.C. requesting that the applicant's name be added as secondary signatory to the [REDACTED] account. Based on the newly submitted evidence, the information provided is sufficient to reopen this matter. Moreover,

the information provided on motion is sufficient to establish that the applicant's position at the [REDACTED] in Washington, D.C. was a semi-diplomatic position. Accordingly, the AAO's decision to the contrary is withdrawn.

On motion, counsel for the applicant asserts that the applicant's return to Pakistan would subject him to a risk of harm due to the political upheavals in his country because the applicant has remained in the United States for over 12 years and that the conditions in Pakistan since his discontinuing his post at the [REDACTED] have radically changed and continue to change. Counsel refers to the United States Country Reports on Human Rights Practices – Pakistan for 2003, 2005 and 2012, as evidence of the human rights problems including extrajudicial killings, torture and disappearances committed by security forces, as well as militants, terrorists, and extremist groups that have affected and continue to affect citizens of Pakistan. Counsel also reasserts the medical difficulties the applicant's child, who has been diagnosed with asthma, would experience if the applicant and his family returns to Pakistan. Counsel claims these difficulties as compelling reasons that prevent 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 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).

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 matter, the applicant indicated in his July 29, 2005 sworn statement, that his top compelling reason for wanting to remain in the United States is to take the Certified Public Accountant (CPA) examination and become an accountant in the United States. *See Record of Sworn Statement by Ijaz Rana*, dated July 29, 2005. In a May 11, 2011 statement, the applicant indicated that the reasons he does not want to return to Pakistan relate to the health and continued education of his children as well as his desire to be an accountant in the United States. On appeal, counsel reiterates that the applicant’s compelling reasons for not returning to Pakistan relate to his daughter, [REDACTED], health condition and his desire for [REDACTED] to receive proper medical attention when needed and for his two children to continue pursuing their academic studies in the United States. Counsel contends that a return to Pakistan would jeopardize the health and education of the applicant’s children. Only on motion, does counsel now add that the applicant’s compelling reason for being unable to return to Pakistan is the risk of harm to him due to the “political upheavals in his country,” and “a serious, dangerous environment which clearly would deny the applicant a peaceful existence in his country.”

Upon a review of counsel’s brief on motion and the country condition information submitted on motion, the AAO determines that the evidence of record is insufficient to demonstrate that the applicant has established compelling reasons related to political changes in Pakistan that rendered him as a diplomat or foreign representative “stateless or homeless” or at risk of harm following political upheavals in the country represented by the government which accredited him. The AAO finds that the record does not include evidence showing that the applicant is at greater risk of harm because of his specific past government employment, political activities or other related reasons. The AAO acknowledges the risks of living in certain areas of Pakistan as the turmoil and violence exercised by anti-government factions continues to exist. 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 of specific threat to him or his family due to his past government employment, political activities, or other related reason. 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.

On motion, counsel reiterates the applicant's claim that his daughter who was diagnosed with asthma and is receiving treatment in the United States would be unable to obtain treatment in Pakistan. Counsel claims that the applicant's daughter's physicians have advised the applicant of the significant health risk to his daughter should she travel overseas. Counsel contends that the health risk to the applicant's daughter, "poses a significant compelling reason why the applicant cannot return to Pakistan," however, the record does not contain any evidence to support this claim. The AAO acknowledges the difficulty the applicant and his children would face with regards to the health care of his children if they returned to Pakistan. However, general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13.

As set forth in our previous decision, the legislative history of Section 13 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. The general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The information provided on motion does not present compelling reasons that prevent the applicant from returning to Pakistan. Thus, the applicant has failed to meet his burden of proof in this regard. 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 preventing 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 AAO's decision to dismiss the appeal will be affirmed.

ORDER: The previous decision of the AAO dated August 20, 2012, is withdrawn as it relates to the characterization of the applicant's semi-diplomatic duties and is affirmed as it

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relates to the issue of compelling reasons that prevent the applicant's return to Pakistan. The application remains denied.