



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 03 2013**

Office: NATIONAL BENEFITS CENTER

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

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,

Ron M. Rosenberg
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)(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 February 2, 2013 recommending that the applicant's request for adjustment of status in the United States be denied because the applicant presented no compelling reasons that prevent his return to Pakistan. *See Director's Decision*, dated February 19, 2013.

The director also denied the application of the applicant's spouse [REDACTED], who also submitted an Application to Register Permanent Residence or Adjust Status (Form I-485), seeking to adjust status under Section 13 as dependent of the applicant. The director issued a separate decision denying the application. The applicant's spouse filed a separate Form I-290B, Notice of Appeal or Motion. The AAO will issue a separate decision for this dependent.

On March 18, 2013, counsel for the applicant submitted a Form I-290B, Notice of Appeal or Motion and an affidavit from the applicant dated March 15, 2013 and country condition information on Pakistan in support of the appeal.

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 22, 2004, in an A-2 nonimmigrant status and served as an [redacted] at the Embassy of Pakistan in Washington, DC until his term ended on August 27, 2009. The U.S. Department of State, Office of Foreign Missions issued a Notice of Termination of the applicant's status on August 27, 2009. In this position, the applicant performed duties that were supportive of the Ambassador's diplomatic duties. As such, the applicant's duties were semi-diplomatic in nature. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on September 27, 2009. 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 the application for adjustment of status on September 27, 2009.

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 personal statement dated September 15, 2009, the applicant indicated that he wants to remain in the United States so that his children will complete their college education and because the security situation in Pakistan is very uncertain due to suicide bombings, terrorism and the killing of innocent people. The applicant stated that it will be very difficult for his family to survive in an environment of "insecurity, instability and harassment." At his adjustment of status interview on April 30, 2010, the applicant stated the following as compelling reasons that prevent his return to Pakistan: "condition of Pakistan at this time is not suitable for me, my wife or children, therefore I want to stay here. Every day there is a suicide bomber, they are killing the women or children and my family and children are not safe. Specially the people going back from the foreign countries, they are not safe, especially from London, America, we are not safe."

On appeal, the applicant submitted another statement in support of the appeal. In that statement, the applicant asserts that the departure of President Musharraf from government has made it very difficult for him to return to Pakistan. The applicant claims that he was appointed to his position at the Embassy because of his support for Musharraf. The applicant also claims that diplomats and other officials who served under the Musharraf administration are being targeted by the PPP and PML government and by extremist and terrorist groups in Pakistan. The applicant declared "I am unable to return to Pakistan due to the real and perceived threats to me and my family's physical wellbeing. The new majority parties in Pakistan are the PPP and the PML which are fully opposed to Musharraf and his supporters." The applicant also asserts that the threat of danger is prevalent throughout Pakistan for individuals who served under the Musharraf administration, but that the danger is even more concentrated in the northwest section of Pakistan where his home village is located because the vast majority of individuals living in that area are avid followers of either the PPP or the PML, and "absolutely oppose any person associated in any way with the Musharraf administration." The applicant further asserts that Musharraf "successfully brought Islamic terrorists to justice" and that these terrorists will try to harm him and his family because of his support for Musharraf.

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.

The AAO has reviewed the applicant's statements and country condition information submitted in support of the application and finds them insufficient to establish compelling reasons that prevent the applicant from returning to Pakistan. The AAO acknowledges the violent situation and lack of security in Pakistan caused in part by the political instability, terrorists and other extremist groups operating in Pakistan and the risks of living in certain areas of Pakistan as the turmoil and violence by these groups in Pakistan persists. We note that the general threat of terrorism is not a sufficiently compelling reason under Section 13 because the threat is directed to all populations in the country and not limited to former diplomats such as the applicant. The applicant has not provided any credible evidence to establish that he and his family will be specifically targeted by these extremist or terrorist groups or by the current government of Pakistan because of his past employment with the government of Pakistan.

The AAO also acknowledges the applicant's desire to remain in the United States for the education and overall wellbeing of his family, 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. 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 compelling reasons 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 does not find evidence in the record to establish that individuals who served the government of Pakistan under Pervez Musharraf, such as the applicant have been targeted or will be targeted by the current government of Pakistan. Also, the evidence of record does not establish that former diplomats who are supporters of Musharraf are being targeted by the current government of Pakistan due to their government service, political activities or other related reasons. 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)). Therefore, the evidence of record in this case 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 U.S. 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).