



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

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.

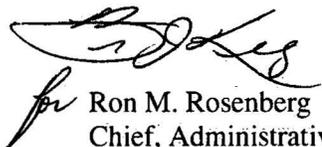
ON BEHALF OF APPLICANT:
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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,


for Ron M. Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, National Benefits Center (director). 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 Form I-485, Application to Register Permanent Residence or Adjust Status after determining that the applicant had failed to demonstrate that he had held a diplomatic or semi-diplomatic position and that compelling reasons prevent his return to Pakistan. The director noted that on January 26, 2013, the U.S. Department of State recommended that the adjustment of status application of the applicant be denied because the applicant was never accredited as a diplomat from Pakistan. *Decision of the Director*, dated February 22, 2013.

On appeal, counsel for the applicant asserts that the applicant has submitted documentation showing that he was eligible for consideration of Section 13 benefits and that there are compelling reasons why the applicant cannot return to Pakistan. Counsel submits an affidavit from the applicant and country condition information in support of the appeal.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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

¹The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 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).

A review of the record does not establish the applicant's eligibility for consideration under section 13 of the Act. The record indicates that the applicant was admitted into the United States in an A-2 nonimmigrant status and served as a [REDACTED] for the Pakistan Navy and was stationed in Greenville, South Carolina. See *Undated Statement from [REDACTED]*. At his adjustment of status interview on February 2, 2009, the applicant stated that the purpose of his trip to the United States in 2006 was to work on the [REDACTED] with [REDACTED]. The applicant stated that his official title was [REDACTED]. He described his duties as "look after account, decision matters with the Pakistan government and the US government, shipment for the parts between the two countries, administration matters, and logistics." The applicant indicated that these duties are semi-diplomatic in nature. *Record of Sworn Statement by [REDACTED]* dated February 2, 2009. A statement from [REDACTED] Embassy of Pakistan in Washington, D.C., dated February 19, 2008 indicated that the applicant, [REDACTED] of the Pakistan Navy who was stationed in Greenville, South Carolina in [REDACTED] has been relieved of his duties as a [REDACTED] upon completion of his assignment in the United States on March 21, 2008. A copy of Form I-566, Interagency Record of Request signed by U.S. Department of State on January 26, 2013, indicated that the applicant was never accredited as a diplomat for the government of Pakistan.

In an affidavit dated May 19, 2013, which the applicant submitted in support of his appeal, the applicant stated that he was employed by the Pakistan Navy and served with the [REDACTED] for

the Embassy of Pakistan from August 2006 through March 21, 2008. The applicant stated that he was assigned to Greenville, South Carolina to work on [REDACTED] [REDACTED] is known as the [REDACTED] and the Mission involved [REDACTED].” The applicant described his duties as: “Liaison between the U.S. and Pakistani military and government officials; Liaison with officials working on [REDACTED] Pakistan; In charge of logistics. Responsible for all equipment/spare parts for the program and for shipment to Pakistan. In charge [REDACTED]; and [REDACTED].” The applicant claimed that these duties were semi-diplomatic in nature because he interacted extensively with the U.S. government and military officials and that the duties were in direct support and furtherance of an important military program.

The applicant’s claim that he performed semi-diplomatic duties for the government of Pakistan is not substantiated by the record. The terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. Although the term “diplomatic” is used in the Act to describe aliens admitted to the United States under section 101(a)(15)(A) of the Act, the language and intent of 8 C.F.R. § 245.3 is to exclude from consideration for adjustment of status under section 13 certain aliens admitted in “diplomatic” status and entitled to the rights and immunities afforded diplomats under international law. Both section 101(a)(15)(A) of the Act and the Vienna Convention recognize that certain accredited employees or officials admitted to serve within embassies or other diplomatic missions are not “diplomatic” staff. The Vienna Convention refers to such personnel as administrative and technical staff, service staff, or personal servants. *The Vienna Convention on Diplomatic Relations*, Art. 1 (April 18, 1961), 500 U.N.T.S. 95. Whereas ambassadors, public ministers, and career diplomatic or consular officers are admitted under section 101(a)(15)(A)(i) of the Act, those admitted under section 101(a)(15)(A)(ii) such as the applicant are described as “other officials and employees” accepted on the basis of reciprocity. These non-diplomatic employees are nevertheless afforded the rights and immunities of diplomatic staff. See *Vienna Convention*, *supra*, Art. 37.

The essential role of a diplomat is the representation of a country in its relations with other countries. See *American Heritage Dictionary of the English Language*, 4th Edition, 2000 (Diplomat: One, such as an ambassador, who has been appointed to represent a government in its relations with other governments); *Black’s Law Dictionary* (Diplomacy: The art and practice of conducting negotiations between national governments). In this case, the evidence of record established that the applicant entered the United States on an A-2 nonimmigrant visa to work as technical staff for the government of Pakistan in the United States. The applicant was never accredited by the U.S. Department of State as a member of the Pakistani diplomatic corps in the United States. The statement from [REDACTED] for the Embassy of Pakistan in Washington, D.C., clearly indicated that the applicant worked as a [REDACTED] for the Pakistani Navy in the [REDACTED] in Greenville, South Carolina. Therefore, the applicant’s claim on appeal is not supported by independent evidence and is inconsistent with his duties as stated by [REDACTED]. The record does not establish that the applicant had any formal advisory or decision-making role at the Embassy of Pakistan in Washington, D.C. or that he represented Pakistan before the United States government or any foreign government in any official capacity. The AAO acknowledges that the inclusion of the term semi-diplomatic in 8 C.F.R. § 245.3 indicates that those accredited aliens not engaged in diplomatic

duties, but who perform duties in direct support and furtherance of such activities, may also be considered for adjustment of status under Section 13. However, 8 C.F.R. § 245.3 provides that 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. By his own statement, and other documents he submitted in support of his application, the applicant entered the United States and performed technical and/or administrative duties for the Pakistani government. The record in this matter is therefore, insufficient to demonstrate that the applicant was entrusted with duties of a diplomatic or semi-diplomatic nature. Accordingly, the applicant is ineligible to adjust status under Section 13 of the Act.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment of status under Section 13 of the Act. The applicant has failed to establish that he was accredited by the U.S. Department of State as a member of the Pakistani diplomatic corps in the United States. The applicant has failed to establish that he was admitted into the United States as a diplomat representing a sovereign country and that he performed diplomatic or semi-diplomatic duties. Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he 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.