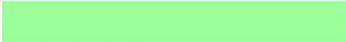




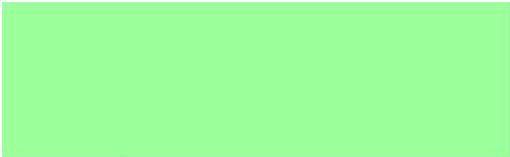
U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: Office: NATIONAL BENEFITS CENTER FILE: 
OCT 17 2013

IN RE: Applicant: 

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, 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 and the application remains denied.

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 that compelling reasons 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 asserted that he had established compelling reasons that prevent his and his family's return to Pakistan. The AAO, after a review of the evidence of record, concurred with the director's determination and dismissed the appeal. The applicant has now filed a motion to reopen and reconsider the AAO's decision.

On motion, counsel for the applicant asserts that the decision of the AAO is "in factual and legal error," and that the "AAO did not apply the proper standards of the law as well as the congressional intent of the statute." Counsel claims that the applicant "was a diplomat who took several decisions and has become a target of the opposition political parties as well as some extremist religious groups." Counsel submits a brief and an affidavit from the applicant in support of the motion.

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

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 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.

As fully discussed in the March 20, 2013 decision, the AAO found that the applicant had failed to provide credible and probative evidence to establish that compelling reasons prevent his return to Pakistan. The AAO considered the applicant's statements as well as the country condition information on Pakistan and determined that the applicant had not provided compelling reasons related to political changes in Pakistan that rendered him as a former diplomat and 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 found that the record did 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. Likewise, the AAO determined that the record lacked any evidence to support the applicant's statement that he fears persecution or death "from one religious group called [REDACTED] because he is a [REDACTED] Muslim." The AAO noted in its previous decision that the applicant traveled back to Pakistan, apparently without incident as he did not report any threats or harm against him, for 45 days during the summer of 2008 and for 28 days in October 2009. On motion, the applicant again fails to indicate any specific threat against him while he was in Pakistan. As the AAO noted previously, although the applicant's fear may be real, he has presented no evidence to establish that he has been the target of extremist religious group(s) in Pakistan or by the Pakistani government.

On motion, counsel for the applicant submits a brief denying the applicant's prior statement at his adjustment of status interview on December 6, 2006, that he does not fear persecution from the government of Pakistan. Counsel asserts that the applicant "did not fear the government in power at that time" but "in Pakistan the defendant parties come to power and there are always used to be revenge on the government officials and politicians who supported the previous government." Counsel explains that "what the petitioner meant was although he has no fear of persecution of the government, he is afraid of returning because he was a government official who served the interest of that government." These assertions are inconsistent with the applicant's prior statements on December 6, 2006 and May 18, 2013. On December 6, 2006, the applicant stated under oath before an immigration official that he was not afraid of persecution from the government of Pakistan; rather he was concerned for his safety and that of his family due to the lack of security in his country. On May 18, 2013, the applicant stated "As per the USCIS decision I have testified before a USCIS officer in New York that I have no fear of persecution from the government. I very clearly remember stating that, that fear of persecution was not from the government at the time because it was the same government that I served." The applicant did not indicate that he is afraid of the current government of Pakistan. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

On motion, counsel claims that some of the evidence the applicant would have presented to establish the compelling reasons that preclude his return to Pakistan is "protected by sovereign immunity." Counsel provides no evidence or further explanation in support of his assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On motion, the applicant claims that he and his family are afraid to return to Pakistan because "we have been receiving phone calls from our friends and relatives that we are being targeted." The applicant provides no detailed information about the nature and scope of the threats or any documentary evidence in support of the claimed threat, nor does he provide any tangible evidence to establish that he and his family would be targeted and harmed in Pakistan because of his religion. 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)).

As set forth in our previous decision and reiterated above, 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 AAO acknowledges the risks of living in certain areas of Pakistan as the turmoil and violence exercised by extremist groups and anti-government factions continue to exist, however, the general threat of terrorism is not a sufficiently compelling reason under Section 13 as the threat is directed to the entire population and not specifically to the applicant and his family due to his past government employment, political activities and other related reasons. Likewise, 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 March 20, 2013, is affirmed. The application remains denied.