



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 05 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 (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 citizen of Pakistan who is seeking to adjust her 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 the immediate relative of 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 provide compelling reasons why she cannot return to Pakistan. The director also noted that the U.S. Department of State issued its opinion January 9, 2013, recommending that the applicant's request for adjustment of status be denied because she has presented no compelling reasons why she is unable to return to Pakistan. *Decision of the Director*, dated January 31, 2013.

On appeal, counsel for the applicant asserts that the director applied an incorrect legal standard in evaluating the application. Counsel claims that there is no requirement that the alien herself must be specifically targeted by any political entity, and no requirement that the harm she fears must be unique to her and not shared by many in the population. Counsel asserts that the compelling reasons that the applicant cited affect Westernized women, and do not affect the entire population the same. Counsel contends that the decision "must be reversed because as a Westernized woman, the applicant will suffer more than general inconveniences and has demonstrated compellingly that she is unable to return to Pakistan."

The record contains, among other documents, a letter brief from counsel as well as on-line news articles on violence against women in Pakistan. The entire record has been reviewed in rendering a decision on 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 Attorney General 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 Attorney General 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 Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

8 U.S.C. § 1255(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).

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).

A review of the record establishes the applicant's eligibility for consideration under Section 13. The applicant was admitted in A-1 nonimmigrant status in October 2003, as the derivative child of a former diplomat, her father, [REDACTED] who served as a minister at the [REDACTED] [REDACTED] from October 2003 until terminated in August 2010. The applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status on August 29, 2011. Therefore, as per the requirements of Section 13, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(i) of the Act as a dependent of her father but no longer held that status at the time of her application for adjustment on August 29, 2011.

As a result, the only issues before the AAO is whether the record also establishes that compelling reasons prevent the applicant's return to Pakistan and whether her adjustment will serve U.S. national interests.

In an August 12, 2011 statement, which the applicant prepared and submitted in support of her application, the applicant stated that she has lived outside of Pakistan for a long time. The applicant stated that she has grown up to be an independent, educated and westernized young woman and fears that if she returns to Pakistan, her “liberal stance on what it means to be a woman will make me an easy target for persecution by the larger community.” The applicant cited the general political instability and terrorism plaguing most parts of the country as well as harmful cultural practices towards women as other reasons why she does not want to return to Pakistan. The applicant added that she is also scared of going back to Pakistan because she will be living in a community where all her basic rights and freedoms will be denied and restricted and her ideas and way of life will be seen as a threat to the established social moral code.

At her adjustment of status interview on September 14, 2012, the applicant provided the following as compelling reasons why she cannot return to Pakistan. The applicant stated that she is scared for her life and freedom. Specifically, the applicant stated that she is scared of her extended family members because of their tribal extremist oppressive views of a woman and scared of the extremist groups such as the Taliban because of their views against education of women. The applicant claimed that two of her friends received death threats after they returned from the United Kingdom because of being educated in the west and being perceived as being morally corrupt, and their little brother was kidnapped and harassed.

The AAO has reviewed the applicant’s statements and counsel’s assertions on appeal and finds that the applicant has not provided compelling reasons that prevent her return to Pakistan. As discussed 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 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.

According to the American Heritage Dictionary, Fourth Edition, the plain meaning of the term “unable” is “lacking the necessary power, authority, or means.” Thus, the “compelling reasons” standard is not a merely subjective standard. Aliens seeking adjustment of status under Section 13 generally assert the subjective belief that their reasons for remaining in the United States are compelling, or that it is interesting or attractive to them to remain in the United States rather than return to their respective countries. What Section 13 requires, however, 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.

Even where the meaning of a statutory provision appears to be clear from the plain language of the statute, it is appropriate to look to the legislative history to determine “whether there is ‘clearly expressed legislative intention’ contrary to that language, which would require [questioning] the

strong presumption that Congress expresses its intent through the language it chooses.” *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 433, fn. 12 (1987). The 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.

Counsel contends that the applicant will face persecution in Pakistan because she is a “Westernized” woman, with different views, values and ways of life from the rest of the women in that part of the world. The applicant claims that her westernized education and independence will be seen as a threat to the established social and moral code and that she will be targeted by her extended family and the Taliban. Both counsel and the applicant claim that these constitute compelling reasons that prevent the applicant’s return to Pakistan. The AAO notes the current country condition in Pakistan is marred with violence from extremist groups and that there are appreciable risks for people living in certain areas of Pakistan. 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 AAO also acknowledges that the applicant may experience hardship if she returns to Pakistan, however, the evidence does not show that she is unable to do so because of any action or inaction on the part of the government of Pakistan or other political entity there. Hardship in re-adapting to one’s country is not a compelling reason under Section 13. Likewise, the general threat of terrorism is not a sufficiently compelling reason under Section 13. The AAO notes that the applicant has not submitted evidence showing that she is at greater risk of harm because of her father’s past government employment, 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)).

The general inconveniences and hardships associated with relocating to another country and the desire to remain in the United States are not compelling reasons under Section 13. Also, the applicant’s concern that her extended family members in her home village in Pakistan would force her to live “a life of quiet maternal and wifely domesticity” despite her education is personal in nature, is not substantiated by the record and is not considered compelling reasons within the meaning of Section 13. It is also noted, that the U.S. Department of State has recommended that the applicant’s adjustment of status be denied because the applicant has not presented compelling reasons that prevent her return to Pakistan. *See* Interagency Record of Request (Form I-566). The AAO therefore concludes that the applicant has failed to meet her burden of proof in demonstrating that there are compelling reasons that prevent her return to Pakistan. As the applicant has failed to demonstrate that there are compelling reasons preventing her return to Pakistan, the question of whether adjustment of status would be in the national interest of the United States need not be addressed.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. She has failed to establish that there are compelling reasons preventing her 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 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.