



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

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.

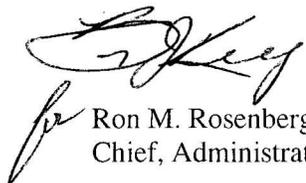
ON BEHALF OF APPLICANT:  
[Redacted]

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 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 a dependent child of 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 that compelling reasons prevent his return to Pakistan.<sup>1</sup> *Decision of the Director*, dated February 27, 2013.

On appeal, counsel asserts that "the decision to deny Form I-485, under section 13 is arbitrary, capricious, and contrary to law. Compelling circumstance have been shown. Additional evidence will be provided in 30 days." *See Form I-290B, Notice of Appeal or Motion*, dated March 22, 2013.<sup>2</sup>

In support of the appeal, the record contains a September 3, 2009 statement, an undated Declaration from the applicant's father and general country condition information on Pakistan. The record does not contain the applicant's own statement. 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.<sup>3</sup>

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

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<sup>1</sup> The director did not make a determination as to whether the adjustment of status of the applicant will be in the national interest of the United States.

<sup>2</sup> Counsel indicated on the Form I-290B that his brief and/or additional evidence will be submitted to the AAO within 30 days. The record does not contain any brief and/or additional evidence as indicated by counsel. The AAO will consider the record as complete and will adjudicate the appeal based on the evidence of record.

<sup>3</sup>The 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).

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 to the United States on June 22, 1999, in an A-2 nonimmigrant status as the dependent child of his father, [REDACTED], who was admitted in an A-2 nonimmigrant status and served as an [REDACTED] for the Embassy of Pakistan in Washington, D.C. from June 22, 1999 until July 24, 2003. During his tenure, the applicant's father performed duties that were supportive of the Ambassador's diplomatic duties. As such, the applicant's father performed duties of a semi-diplomatic nature for the Embassy of Pakistan in Washington, D.C. until his tenure was over on July 24, 2003. The U.S. Department of State was notified of the termination of the applicant's father's diplomatic duties on July 25, 2003. Accordingly, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(ii) of the Act but no longer held that status at the time he filed his application for adjustment on May 28, 2009.<sup>4</sup>

The issues before the AAO in the present matter are 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.

Upon a *de novo* review of the record, the AAO concurs with the director's determination that the applicant had not established compelling reasons that prevent his return to Pakistan.

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<sup>4</sup> The record reflects that the applicant had previously filed a Form I-485 [REDACTED] on March 26, 2004, which was summarily dismissed on appeal by the AAO on February 24, 2009.

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.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

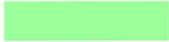
In a September 3, 2009 Sworn Statement and an undated declaration in the record, the applicant’s father cited several reasons as compelling reasons why he and his family cannot return to Pakistan. The applicant’s father indicated that his residence in Karak, Pakistan is not safe, that murder, killing and kidnapping is commonplace in Pakistan and that people who worked with the government and people returning from the United States are the main targets. The applicant’s father stated that the Taliban and other terrorists are after his family because in 2002, he accompanied a Pakistani deportee from the United States to Pakistan. The applicant’s father claimed that in March and August 2004 and in March 2008, his brother-in-law in Pakistan received telephone calls from unknown individuals who were asking for his whereabouts. The applicant’s father viewed the

phone calls as threats from terrorists and the Taliban against him and his family because he accompanied a deportee back to Pakistan in 2002. The applicant's father also stated that his children, including the applicant are at risk in Pakistan because they have lived in the United States for a long time, they are considered to be "Americanized", they cannot speak, read or write Urdu or Pashto – the Pakistani languages, that they would have no opportunity for education and employment and that they cannot adjust to living in Pakistan.

On appeal, counsel merely asserts that the applicant has established compelling reasons why he cannot return to Pakistan. The applicant has provided no new or additional facts or evidence in support of his application or the appeal separate from those claimed by his father. The applicant has provided no information on specific threats to him or to any member of his family from the Taliban, other terrorist groups in Pakistan or from the government of Pakistan.

The AAO has reviewed the statements made by the applicant's father and counsel on appeal and the country condition information submitted by the applicant in the record. The AAO acknowledges that country conditions in Pakistan show a country continuing to struggle with democracy and the universal freedoms enjoyed by individuals in the United States and other countries. The AAO also 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 and members of their family 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 father's past government employment, political activities, or other related reason. The applicant's desire to remain in the United States for better educational and financial opportunities does not qualify as a compelling reason within the meaning of Section 13. The applicant's father's claim that he and his family would be targeted by the Taliban because he accompanied a deportee back to Pakistan is not substantiated by the record. 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.

The AAO further acknowledges that the applicant may experience hardship if he returns to Pakistan with his family but the evidence does not show that he is unable to do so because of any action or inaction on the part of the government of Pakistan or other political entity there. As previously noted, the violent situation and lack of security in Pakistan caused in part by the political instability and by terrorist and other extremist groups operating in Pakistan and the risks of living in certain areas of the country remains a big problem for the people of Pakistan. However, 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 and members of their family as claimed by the applicant's father. Also, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. It is also noted that the State Department has recommended that the application be denied because the applicant has presented no compelling reasons why he cannot return to Pakistan. *See* Interagency Record of Request (Form I-566). Accordingly, the AAO concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his or his family's return to Pakistan. As the applicant has failed to demonstrate that there are compelling reasons



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*NON-PRECEDENT DECISION*

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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 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.