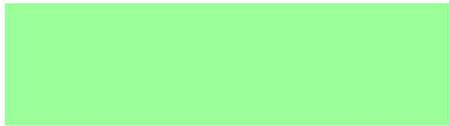




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **SEP 19 2013** Office: NATIONAL BENEFITS CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

ON BEHALF OF APPLICANT:

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 compelling reasons prevent his return to Pakistan. The director also noted that the U.S. Department of State issued its opinion on January 24, 2013, recommending that the application be denied because the applicant has provided no compelling reasons why he is unable to return to Pakistan. *Decision of the Director*, dated February 27, 2013.

On appeal, the applicant provides an additional statement indicating reasons which he considers compelling that prevent his return to Pakistan. The applicant also submitted provided country condition information on Pakistan 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.<sup>1</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 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

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<sup>1</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).

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).

The record does not establish the applicant's eligibility for consideration under Section 13. Consequently, the director's decision to deny the applicant's adjustment application on the basis that he failed to demonstrate compelling reasons preventing his return to Pakistan was erroneous and is withdrawn.

Upon a *de novo* review of the record, the AAO finds that the applicant has not established his eligibility for adjustment of status under Section 13 of the Act. The applicant has not established that he performed diplomatic or semi-diplomatic duties as required by 8 C.F.R. § 245.3. The record in this case reflects that on December 10, 2007, the applicant was admitted to the United States in an A-2 nonimmigrant status and thereafter worked as a [REDACTED] at the [REDACTED] in Washington, D.C. until October 27, 2011, when his status was terminated by the U.S. Department of State. At his adjustment of status interview on March 8, 2012, the applicant indicated his official title as "[REDACTED]" He described his duties at the Embassy as "[REDACTED]" The applicant stated "I was working with the Minister Press as [REDACTED] I assisted in coordinating activities between the Department of State and the [REDACTED] regarding [REDACTED]." The applicant claimed that his duties were diplomatic in nature. *Record of Sworn Statement by [REDACTED]* dated March 8, 2012.

The AAO does not agree with the applicant's characterization of his duties as diplomatic duties. 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 applicant was admitted to the United States in an A-2 nonimmigrant status and served as a [REDACTED] at the [REDACTED] in Washington, D.C. The applicant stated that he performed [REDACTED] tasks at the Embassy and that he worked with the Press Minister as a [REDACTED] and assisted in coordinating activities between the Department of State and the Embassy of Pakistan regarding [REDACTED]. The record however, does not contain an official description of the applicant’s duties at the Embassy. The general information the applicant provided at his adjustment of status interview regarding his duties is inconsistent with his official designation by the U.S. Department of State as a [REDACTED]. *See U.S. Department of State Office of Foreign Missions, Notification of Termination*. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the applicant equated his claimed duties to diplomatic duties, the applicant does not provide detailed information indicating his actual role as a [REDACTED] and whether these duties involved [REDACTED] duties or duties that are diplomatic duties.

The record does not demonstrate that the applicant had any formal advisory or decision-making role at the Embassy or that he represented [REDACTED] 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 testimony, the applicant described his duties at the Embassy as [REDACTED]. Accordingly, the record in this matter is insufficient to demonstrate that the applicant was entrusted with duties of a diplomatic or semi-diplomatic nature.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment of status under Section 13. He has failed to establish that he performed diplomatic or semi-diplomatic duties. As the applicant has failed to establish his eligibility for adjustment of status under section 13, the issues of whether he has established compelling reasons that prevent his return to Pakistan or whether his adjustment of status will be in the national interest of the United States need not be discussed. 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.

**ORDER:** The appeal is dismissed.