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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **SEP 20 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,

A handwritten signature in black ink, appearing to read "Ron M. Rosenberg".

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 amended, 95 Stat. 1611, 8 U.S.C. § 1255b, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

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 performed diplomatic or semi-diplomatic duties and 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 26, 2013, recommending that the applicant’s adjustment of status be denied because the applicant had no qualifying position and had provided no compelling reasons that prevent his return to Pakistan. *Decision of the Director*, dated February 22, 2013.

On appeal, counsel for the applicant asserts that the director erred in denying the applicant’s adjustment of status because the director “failed to properly analyze the duties of the applicant and the statutes relating to the case of the principal applicant.” Counsel also asserts that the statute grants benefits to “other officials and employees” and is not restricted to persons performing semi-diplomatic duties. Counsel further asserts that the applicant has presented compelling reasons why he cannot return to Pakistan and requests that the applicant’s adjustment application be approved. Counsel submits country condition information on Pakistan in support of the appeal.

Section 13 of the Immigration and Nationality Act of September 11, 1957, Pub. L. No. 85-316, 71 Stat. 642, as amended 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).

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 shows that the applicant was admitted to the United States in a D-1 nonimmigrant status on September 22, 2004, and thereafter served as a [REDACTED] for the [REDACTED]. The applicant's tenure at the [REDACTED] was from September 22, 2004 until November 26, 2007. *Statement from the [REDACTED]* dated November 29, 2007. Accordingly, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States under section 101(a)(15)(A)(ii) of the Act but no longer held that status at the time he filed his application for adjustment on December 20, 2007.

The issue before the AAO in the present matter is whether the record establishes that the applicant had a qualifying position, that is, that he performed diplomatic or semi-diplomatic duties while employed at the [REDACTED].

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).

At his adjustment of status interview on December 16, 2008, the applicant stated under oath that his official title was a [REDACTED]. He described his duties as "my job is to act as a [REDACTED] and guard all those people that use to go to the [REDACTED] too." A statement, dated November 29, 2007 from the Protocol and Liaison Service of

the [REDACTED] indicated that the applicant served as [REDACTED]

On appeal, counsel, asserts that the statute does not restrict the benefits under Section 13 to those individuals who performed diplomatic or semi-diplomatic duties, but was extended to “other officials and employees” in similar positions as the applicant. Counsel asserts that the applicant has been attached to diplomats as a security guard, but that the applicant has to deal with a lot of diplomatic materials and carried such materials within the city, and from city to city. Counsel also asserts that the applicant guarded important materials subject to diplomatic dialogue and as such the “alien has the significant distinction between a security guard and the security guard assigned to a diplomat, or assigned to ambassador to the [REDACTED] of country in US . . . such an alien becomes privy to so many diplomatic matters and encounters between the diplomats of his country and those of other countries.” Counsel argues that even if the benefit of Section 13 is limited to those who performed diplomatic or semi-diplomatic duties, that the applicant’s duties and responsibilities as a [REDACTED] were in support of the diplomatic mission and therefore were semi-diplomatic in nature.

The AAO finds that counsel’s assertions on appeal are not persuasive. We also find counsel’s assertions on appeal regarding the applicant’s duties and responsibilities inconsistent with the applicant’s prior statement on December 8, 2008, and the November 29, 2007 statement from the [REDACTED]. The applicant stated that his duties were to guard the [REDACTED] and the people that come to the [REDACTED]. The applicant never testified to guarding diplomatic materials as claimed by counsel or that he traveled “with the diplomats, moving within the city, or from city to city, guarding important materials subject to diplomatic dialogue.” 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.* Also, the record does not contain any evidence to substantiate counsel’s expansion of the applicant’s duties and responsibilities. Without the necessary documentation describing the applicant’s actual responsibilities and duties, the AAO is unable to conclude that the applicant’s duties were semi-diplomatic duties rather than clerical, menial or administrative duties. 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). 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)).

Although the record shows that the applicant obtained classification under section 101(a)(15)(G)(i) of the Act, and no longer maintained that status at the time he filed for adjustment of status, the director determined that the applicant did not perform duties of a diplomatic or semi-diplomatic

nature. The AAO concurs with this determination.¹ The AAO acknowledges that the terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations and that the standard definitions of terms such as diplomat, diplomatic and diplomacy are varied and broad, and that, in practice, diplomacy may encompass many responsibilities and duties. The AAO finds, however, that 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). 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. These "non-diplomatic" employees are nevertheless afforded the rights and immunities of diplomatic staff. See *Vienna Convention, supra*, Art. 37. In the matter of non-diplomatic employees who are admitted pursuant to section 101(a)(15)(G)(i) of the Act, USCIS must evaluate the position held and its attendant duties to determine whether the applicant is eligible under Section 13.

In this case, the record shows that the applicant served as a [REDACTED]. His duties and responsibilities were to act as [REDACTED] for the [REDACTED] and the people who visit the [REDACTED]. [REDACTED] is not diplomatic representation. Counsel's assertions that the applicant guarded and transported diplomatic documents is not substantiated by any other evidence. There is no evidence in the record to establish that the applicant was entrusted with guarding and transporting confidential or secret diplomatic documents. As previously indicated 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)). Accordingly, the applicant has failed to demonstrate that he performed 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.

¹ It is also noted that the U.S. Department of State has recommended that the applicant's request for adjustment of status be denied because the applicant had no qualifying position. See Interagency Record of Request (Form I-566).