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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: NOV 0 6 2014 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 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, who was born in Kuwait and is a citizen of Pakistan, 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 the 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 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 noted that the Department of State issued its opinion on February 25, 2014, advising that it could not make a favorable recommendation in this case as the applicant had not established compelling reasons that prevent his return to Pakistan. *Decision of National Benefits Director,* dated May 28, 2014. It is noted that the U.S. Department of State's opinion is a recommendation and not binding on the AAO's *de novo* authority to review a case.[1]

On appeal, counsel for the applicant asserts that the director erred in denying the applicant's adjustment of status. Counsel asserts that the applicant's father worked as the personal secretary to the Consul General of Pakistan in New York in a semi-diplomatic capacity as his duties were supportive of the Consul General and his diplomatic duties. Counsel also asserts that the applicant has presented compelling reasons why he cannot return to Pakistan and requests that the applicant's adjustment application be approved.

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.
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> (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,

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[1] 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).

> 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).

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. 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 issues before the AAO in the present case are, therefore, 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.

We now turn 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).

We concur with the director's determination that the applicant failed to establish compelling reasons that prevent his return to Pakistan. His stated reasons for not wanting to return to Pakistan are not compelling reasons under section 13.

In a December 24, 2008 statement the applicant's father stated that he does not want to return to Pakistan because of his concern for the safety and well-being of his children who have been away from Pakistan for a long period of time, been educated in the English language, and have adjusted to foreign cultures. The applicant's father stated that he fears that his children will "become aliens in their homeland because of cultural gap from many years of grooming in foreign countries and different environment." The applicant's father also stated that he is concerned for his family's safety because of extremist Islamic and terrorist groups operating in Pakistan. The applicant states the same reasons prevent his return to Pakistan.

On appeal, counsel for the applicant reiterates the applicant's father's fear of attacks by extremist and terrorist groups in Pakistan, including the Taliban, who hate the United States and his children who have become "Westernized" will not be able to assimilate into Pakistani culture and will be singled out and targeted. Counsel also asserts that the applicant's father's employment at the Consulate General of Pakistan in New York was terminated as a retaliatory measure against him based on false accusations leveled against him, that he was denied a pension and incurred "many enemies both within the Consulate General in New York, the Embassy in Washington, D.C. and in the Foreign Ministry in Pakistan." Counsel claims that some of the applicant's father's "enemies" have returned to Pakistan and are holding powerful positions in the country.

Counsel also asserts that the applicant is concerned about the Islamic extremists and terrorist groups in Pakistan because of his family's long residence in the United states and dealings with Western nations, that he fears that he cannot return and safely live in Pakistan because he and his family have lived in the United States and outside of Pakistan for most of their lives and they will be perceived as American and be targeted for harassment and persecution, and that as women, his sisters would not be able to attend school in Pakistan because schools for girls are often attacked or bombed. Counsel further asserts that the applicant's father has received specific threats from relatives and fears that he will be harmed by those relatives over the family land dispute.

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 reason 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. 433, fn. 12 (1987). The legislative history supports the plain 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.

We acknowledge that the applicant and his family may face some difficulties adjusting to living in Pakistan after a prolonged period of absence. However, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The applicant has submitted no credible evidence to establish that he and his family are at greater risk of harm because of his father's past Pakistani government employment. We also acknowledge the risks of living in certain areas of Pakistan as the turmoil and violence by extremist and other terrorist groups in Pakistan persists. 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 applicant has not provided evidence that he is at greater risk of harm because of his father's past government employment, political activities, or other related reason. That the applicant and his family may be perceived as having western values are not characteristics that preclude the applicant from returning to Pakistan under Section 13. The evidence of record does not establish that the applicant is unable to return to Pakistan because of any action or inaction on the part of the government of Pakistan or other political entity there as required under Section 13.

Even if, as the applicant claims, his father's employment was terminated because he was perceived as being an opponent of the present Pakistani government, and as a subterfuge for punishing

political opponents, though unfortunate, does not establish that the applicant would be "left homeless and stateless" as a consequence of "Communist and other uprisings, aggression, or invasion" that have "wiped out" his government. The record lacks evidence to establish that the applicant has been rendered stateless or homeless by political upheaval, hostilities, etc., and is thus *unable* to return to and live in his country. We find the evidence of record insufficient to demonstrate that compelling reasons prevent the applicant from returning to Pakistan. The applicant has failed to meet his burden of proof in this regard.

The AAO finds that the applicant has failed to meet his burden of proof demonstrating that there are compelling reasons that prevent his return to Pakistan for the purposes of Section 13. It is noted that the applicant has addressed the issue of whether his adjustment of status is in the national interest. 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, we find 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 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.