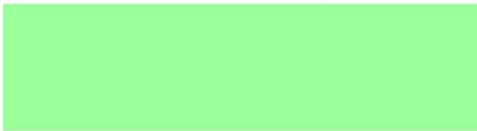




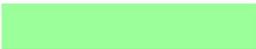
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **NOV 26 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: SELF-REPRESENTED

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,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the National Benefits Center Director and was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The matter is now before the AAO on a motion to reopen. The motion will be dismissed. The application will remain denied.

The applicant is a native and citizen of Bangladesh 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 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 application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent his return to Bangladesh. The director noted that the Department of State issued its opinion on January 14, 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 Bangladesh. *Decision of National Benefits Director*, dated March 31, 2014.

On August 26, 2014, upon a *de novo* review of the evidence of record, we concurred with the determination made by the director. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The applicant's wife [REDACTED], his daughter [REDACTED] and his son ([REDACTED]) each submitted an Application to Register Permanent Residence or Adjust Status (Form I-485), seeking to adjust status under Section 13. The director issued separate decisions denying these applications. The AAO issued separate decisions dismissing each appeal. These dependents each filed a separate Form I-290B, Motion to Reopen. The AAO will issue a separate decision for each of the dependents.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The motion to reopen qualifies for consideration under 8 C.F.R. § 103.5(a)(2) because the applicant alleges new facts and provides supporting documentation not previously in the record in support of his assertion that compelling reasons prevent his return to Bangladesh.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The motion qualifies for consideration under 8 C.F.R. § 103.5(a)(3) because the applicant alleges that the director and the AAO made an erroneous decision through misapplication of law or policy, or provide precedent decisions to support such a claim, in determining that the applicant failed to establish compelling reasons why he cannot return to Bangladesh.

On motion, the applicant requests oral argument. Oral argument is limited to cases where cause is shown. 8 C.F.R. 103.3(b). It must be shown that a case involves unique facts or issues of law which cannot be adequately addressed in writing. In this case, the issues are sufficiently represented by the written record. No cause for oral argument is shown. Therefore, the request is denied.

On motion, as on appeal, the applicant requests consideration on humanitarian grounds. He states that due to his teenage daughter's medical conditions, hardship would result to him, his daughter, and his family if they return to Bangladesh. The applicant submits a statement and additional country conditions reports.

As stated in the director's March 31, 2014 denial, and in our dismissal decision, the issue in this proceeding is whether the applicant has established compelling reasons preventing his return to Bangladesh.

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 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.

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).

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).

A review of the record established the applicant’s eligibility for consideration under Section 13 of the 1957 Act. The applicant last entered the United States on June 5, 2010, as an A-1 non-immigrant to work as a [REDACTED] California. His status was terminated on February 10, 2012. The applicant applied for adjustment of status on February 22, 2012. Per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States pursuant to 101(a)(15)(A)(i) of the Act but did not hold diplomatic status at the time he filed this application for adjustment on February 22, 2012.

In our dismissal decision, upon review of the applicant’s sworn statement before a USCIS immigration officer on July 13, 2012, the applicant’s assertions on appeal, as well as the current country conditions in Bangladesh, we determined that the applicant had not provided compelling reasons related to political changes in Bangladesh that rendered him as a foreign representative “stateless or homeless” or at risk of harm following political upheavals in the country represented by the government which accredited him. We noted that the record did not include evidence showing that the applicant is at greater risk of harm because of his specific past government employment, political activities or other related reasons, including his employment as [REDACTED]. We also noted that by his own sworn testimony before an immigration officer on July 13, 2012, when asked what compelling reason prevents his return to Bangladesh, the applicant stated that his daughter has special needs due to her medical conditions as she is autistic, is mentally disabled, and has other medical complications.

On motion, as on appeal, the applicant reiterates that it would be a hardship to return to Bangladesh because his daughter suffers from a previously stated medical conditions and complications, and that returning to Bangladesh will result in hardship to his daughter and his family due to lack of adequate medical services and societal attitudes towards children with medical disabilities. The applicant again points to country conditions reports in support of his assertion that his family is at risk of serious harm due to overt societal discrimination against persons with disabilities, such as his daughter who suffers from autism. The applicant asserts the definition of “compelling” encompasses this reason as compelling. Again, we note that the applicant’s child’s medical conditions are unfortunate, however, there are no humanitarian exceptions to the requirement that

the applicant demonstrate compelling reasons that are related to his previous service as a [REDACTED] prevent his return to Bangladesh.

In his statement submitted on motion, as on appeal, the applicant states that poor human rights conditions in Bangladesh are a cause of concern for him and his family. Again, on motion, the applicant points to various generalized human rights issues in Bangladesh, such as a lack of respect for the integrity of the person, including freedom from disappearance, torture and other cruel, inhuman, or degrading treatment or punishment, and discrimination and societal abuse and trafficking of women, children, minorities and persons with disabilities, rape and domestic violence. There is no indication in the documentation provided that the applicant would be singled out or targeted for such abuse. On motion, the applicant states that the regime in Bangladesh is not the same government as the one under which he served, and that the current regime of Sheikh Hasina has become “very ruthless and non-democratic and established a rule of anarchy in the whole country.” Again, we note that although the applicant’s fear may be real, it is speculative and no evidence has been presented that the applicant or his family would be targeted by the government of Bangladesh.

As set forth in the director’s decision, 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). Contrary, to the applicant’s contention, as stated in our dismissal decision, 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. Desiring to establish a life in the United States is not a compelling reason under Section 13. Similarly, the general hardship of relocating to another country is not a compelling reason under Section 13. The documentation provided does not present compelling reasons that prevent the applicant from returning to Bangladesh. The applicant has failed to meet his burden of proof in this regard. As the applicant has not established that there are compelling reasons that prevent his return to Bangladesh, the question of whether 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 Bangladesh. 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 motion is dismissed. The previous decision of the AAO is affirmed. The application remains denied.