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U.S. Citizenship  
and Immigration  
Services



DATE: Office: NATIONAL BENEFITS CENTER

FILE:



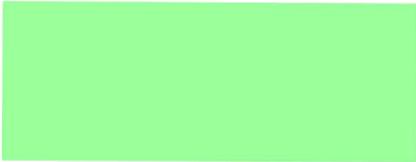
NOV 26 2014

IN RE: Applicant:



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".

Ron M. Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the 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 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 compelling reasons that prevent his return to Pakistan. The director also noted that the U.S. Department of State issued its opinion on November 20, 2013 recommending that the applicant's request for adjustment of status in the United States be denied because the applicant presented no compelling reasons that prevent his return to Pakistan. *See Director's Decision*, dated January 14, 2014.

The director also denied the application of the applicant's spouse [REDACTED] and his children, [REDACTED] ([REDACTED])

[REDACTED] who each submitted an Application to Register Permanent Residence or Adjust Status (Form I-485), seeking to adjust status under Section 13 as the derivative dependents of the applicant. The director issued a separate decision denying each application. The dependents have each filed a separate Form I-290B, Notice of Appeal or Motion, requesting the AAO to review the director's decision. We will issue a separate decision for each of the dependents.

On February 11, 2014, the applicant filed a Form I-290B, Notice of Appeal or Motion, requesting the AAO to review the decision of the director denying his application. Counsel submitted a brief and country condition information on Pakistan in support of the appeal.

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. 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 legislative history of Section 13, including the 1981 amendment adding the term "compelling reasons," 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.

A review of the record establishes the applicant's eligibility for consideration under Section 13 of the 1957 Act. The record reflects that the applicant was admitted into the United States on September 20, 2007, in an A-2 nonimmigrant status and thereafter served as an Accountant for the Embassy of Pakistan in Washington, D.C. until his term ended on February 16, 2012. The U.S. Department of State, Office of Foreign Missions, issued a Notice of Termination indicating February 16, 2012 as the termination date of the applicant's status at the Embassy of Pakistan in Washington, D.C. In this position, the applicant performed duties that were supportive of the Ambassador's diplomatic duties.

As such, the applicant's duties were diplomatic and/or semi-diplomatic in nature. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on March 16, 2012. Therefore, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(ii) of the Act but no longer held that status at the time he filed the application for adjustment of status on March 16, 2012.

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 – requirements set forth in section 13(b) of the 1957 Act.

The AAO now turns to a review of the evidence of record, including the information submitted on appeal.<sup>1</sup> 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).

In a personal statement dated March 12, 2013, the applicant indicated that the reason he wants to remain in the United States is for his children to continue their education in the United States. The applicant also stated that the security situation in Pakistan is uncertain due to recent extremism and terrorism, that the Taliban in Pakistan are kidnapping children to get ransom from their parents and that recently, many children of families returning from the United States and the United Kingdom for visits have been kidnapped from the [REDACTED] for ransom. The applicant is concerned that if he and his family return to Pakistan, his children will be exposed to the risk of kidnapping for ransom. The applicant cited the above and the suicide bombings taking place in Pakistan as additional reasons he does not want to return to Pakistan with his family.

At his adjustment of status interview before an immigration officer on September 4, 2013, the applicant stated under oath the following as the reasons he does not want to return to Pakistan: the safety of his children, lack of security including terrorism, and suicide bombings as the compelling reasons that prevent his going back to Pakistan. The applicant also indicated that he does not want to expose his children to these uncertainties in Pakistan. When asked if he will be persecuted if he returned to Pakistan, the applicant did not affirmatively indicate that he will be persecuted in Pakistan. He stated that he does not fear persecution because he served a major part of his government service abroad.

On appeal, the applicant submitted an affidavit dated in February 2014. In that affidavit, the applicant stated that he worked at the Embassy during the regime of [REDACTED], that he had close ties with [REDACTED] second in command. The applicant claimed that during the United States war against terrorism, that [REDACTED] was a key ally of the United States government and that he worked closely with the [REDACTED] regime passing information from the [REDACTED] to Pakistan. He claimed that because of his close ties with [REDACTED] he was

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

considered “their man in the Embassy.” The applicant further claimed that his close ties with [REDACTED] and his role in the war against terrorism, is well known to the current president of [REDACTED] and the Taliban in Pakistan. The applicant contends that if he returned to Pakistan, he would be arrested, tortured and jailed.

On appeal, counsel for the applicant restates essentially what the applicant stated in his affidavit regarding his close ties with former [REDACTED] and his role in the war against terrorism in Pakistan during the regime of [REDACTED]. Counsel asserts that the compelling reasons preventing the applicant from returning to Pakistan are related to “the political reasons that render him and his family stateless.”

We have reviewed the applicant’s statements, counsel’s brief on appeal and country condition information submitted in support of the application and find them insufficient to establish compelling reasons under Section 13. The AAO acknowledges the violent situation and lack of security in Pakistan caused in part by the political instability, terrorists and other extremist groups operating in Pakistan and the risks of living in certain areas of Pakistan as the turmoil and violence by these groups in Pakistan persists. However, we note that 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 such as the applicant. The applicant has provided no credible evidence to establish that he and his family will be specifically targeted by these extremist or terrorist groups or by the current government of Pakistan because of his past employment with the government of Pakistan.

The AAO also acknowledges the applicant’s desire to remain in the United States for the education and overall wellbeing of his family, however, the applicant has failed to demonstrate that he is unable to return to Pakistan based on compelling reasons related 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. We further acknowledge the difficulties the applicant’s children may encounter in adjusting to living in Pakistan after a prolonged period of absence from the country. However, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The applicant has provided no credible evidence to establish that he and his family are at greater risk of harm because of his past government employment, political activities, or other related reason. The applicant’s desire to create better educational and financial opportunities for his family in the United States are not compelling reasons under Section 13 of the Act. 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.

The applicant claims that he worked closely with former [REDACTED] in the war against terrorism in Pakistan, and that the current government of [REDACTED] and the Taliban will target him for persecution for that reason. However, the evidence in the record does not support such assertions. The record does not establish that individuals who served the government of Pakistan under [REDACTED], such as the applicant, have been targeted or will be targeted by the current

government of Pakistan. Also, the evidence of record does not establish that former diplomats and political allies of former president Musharraf are being targeted by the current government of Pakistan because of their government service, political activities or other related reasons. 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 evidence of record in this case is insufficient to establish that the applicant in his role as a returning diplomat would be at greater risk of harm because of his past government employment, political activities or other related reason.

The eligibility for relief under section 13 is limited and ineligibility for section 13 relief does not preclude the applicant from pursuing other benefits provided under the immigration laws of the United States. Accordingly, we find that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to Pakistan for the purposes of Section 13.<sup>2</sup> 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 U.S. 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 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.

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<sup>2</sup> It is also noted that the U.S. Department of State issued its recommendation that the applicant's request for adjustment of status be denied because the applicant has presented no compelling reasons why he cannot return to Pakistan. See Interagency Record of Request (Form I-566).