



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: Office: NATIONAL BENEFITS CENTER

OCT 06 2014

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.

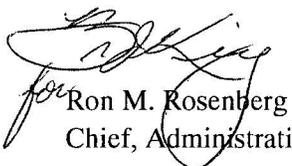
ON BEHALF OF APPLICANT:

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. 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 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)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

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 February 19, 2014 recommending that the applicant’s request for adjustment of status in the United States be denied because the applicant presented no compelling reasons why he is unable to return to Pakistan. *See Director’s Decision*, dated May 28, 2014.

On July 2, 2014, counsel for the applicant submitted a Form I-290B, Notice of Appeal or Motion and a brief in support of the appeal. Counsel asserts that the director’s decision is factually and legally incorrect in finding that the applicant has not presented compelling reasons demonstrating that he is unable to return to Pakistan. Counsel claims that the applicant is from a “long-standing [redacted] family,” that [redacted] are currently being targeted by the [redacted] in Pakistan and that the current government of Pakistan is unwilling and unable to protect the applicant upon his return to Pakistan. Additionally, counsel claims that the applicant is being targeted by the current government of Pakistan because of his prior duties and responsibilities as a former diplomat for the Pakistani government in the United States. Counsel further claims that the applicant and his family would also be targeted by extreme groups in Pakistan.

In support of the appeal, counsel submits country condition reports – an Amnesty International report on Pakistan, on-line news reports on Pakistan and other documents purportedly from the Ministry of Foreign Affairs in Pakistan.

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.

A review of the record establishes the applicant's eligibility for consideration under Section 13 of the 1957 Act. The record indicates that the applicant was last admitted to the United States on July 29, 2007, first as an A-2 nonimmigrant which was later changed to A-1 nonimmigrant status. The applicant served as a [REDACTED] from September 27, 2007 until his retirement on June 22, 2012. *Letter from* [REDACTED] dated June 25, 2012. The record further indicates that the U.S. Department of State, Office of Foreign Missions, terminated the applicant's diplomatic status effective July 13, 2012, based on the notification from the government of Pakistan that the applicant retired from his diplomatic position on June 22, 2012. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on July 19, 2012. Therefore, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in a diplomatic or semi-diplomatic status under section 101(a)(15)(A)(i) of the Act but no longer held that status at the time of his application for adjustment of status on July 19, 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. 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 July 13, 2012, which the applicant submitted in support of his adjustment application, the applicant stated the following as compelling reasons that prevent his return to Pakistan. The applicant stated that for more than 36 years, he had been on foreign postings/assignments to Pakistan Embassies in different countries; that his children were brought up abroad, studied in the English language and adjusted to foreign cultures, societies and environment; and that his children did not have the opportunities to learn their native Urdu language and therefore are unable to read and write in the Urdu language. The applicant claims that the language deficiency will hinder the children's career aspirations in Pakistan. The applicant further stated that his children are apprehensive that they will "become aliens in their homeland because of cultural maladjustment resulting from years of grooming in foreign countries and different environments, especially after their exposure to American values of freedom, secularism, equality-gender, individual rights and opportunities." The applicant concludes "I found no other alternative but to stay back in the interest of continued education, career and future prospects for my children in the U.S. and to prevent disintegration of our family . . . If I leave the US it would be impossible for me to fund my children's continued stay and education in the US with my income in Pakistan."

At his adjustment of status interview before an immigration officer, the applicant stated under oath that the compelling reasons that prevent his return to Pakistan is the difficulty of finding employment in Pakistan because of the economy and the instability in the country. The applicant also stated that he and his family will be targeted for persecution because of his religion and financial situation, because the people in Pakistan will think that he has money and his family could be targeted for blackmail or kidnapping.

On appeal, counsel for the applicant asserts that the applicant would be targeted in Pakistan because of his religion. Counsel claims that the applicant would be targeted by the government of Pakistan because while the applicant was in the United States, his boss, the Ambassador of Pakistan to the United States, Mr. [REDACTED] was accused of "several acts of treason" including allowing visas "for people who should not have received them." Counsel also claims that the applicant was the signatory of those visas and all visas issued in the United States as part of his duties. Counsel contends that the applicant and his family are at greater risk of harm if he returns to Pakistan because of his duties as a Consular Agent, who the government perceived to have issued visas to undeserving people and because of his Shia religion.

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.

What Section 13 requires 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. The AAO finds that a review of the totality of the Section 13 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.

In this case, we have reviewed the applicant’s statements, counsel’s assertions on appeal; counsel’s brief in support of the appeal; country condition information and other documentation submitted on appeal. We find the evidence of record insufficient to establish that the applicant and his family would be targeted for harm by the government of Pakistan because of his duties and responsibilities as a former [REDACTED]. Counsel claims that the applicant “was the signatory of all visas issued in the United States including visas to people who should not have received them, which was the reason the former Ambassador of Pakistan to the United States, [REDACTED] has been targeted for persecution in Pakistan.” Counsel claims that should the applicant return to Pakistan, he, too, would be targeted for persecution. The record however, does not support counsel’s assertions that the applicant was the signatory on all visas issued in the United States including to undeserving people and that he would be subject to persecution like the former Ambassador of Pakistan to the United States. 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). In addition, the applicant’s claim on appeal that he would be targeted by the government of Pakistan because of his duties as a former Consular Agent is inconsistent with his prior statements. In those statements, dated July 13, 2012 and October 2, 2012 the applicant indicated the reasons he does not want to return to Pakistan was for the education, career advancement of his children, his future employment and the general wellbeing of his children. 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.*

The applicant also claims that his family would be targeted for persecution because of his religion. The applicant has failed to provide credible and probative evidence to establish that he and his family would be targeted because of his religion if he returned to Pakistan. 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)).

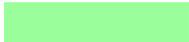
The AAO notes the current country condition in Pakistan is marred with violence from extremist groups and that there are appreciable risks for people living in certain areas of Pakistan. However, the purpose of Section 13 is to offer protection to those individuals who are unable to return to the State 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 provided no credible evidence to establish that he is at greater risk of harm because of his past government employment, political activities, or other related reason. The evidence of record does not establish that the applicant is unable to return 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 AAO acknowledges the applicant's desire to remain in the United States, 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. The AAO further acknowledges 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. As indicated before, 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 considered compelling reasons that preclude the applicant from returning to Pakistan as required 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. The record 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, the AAO finds 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. 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 serve the U.S. national interest will not be addressed.

For the reasons discussed above, the AAO finds 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

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NON-PRECEDENT DECISION

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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.