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



U.S. Citizenship
and Immigration
Services

DATE: Office: NATIONAL BENEFITS CENTER

FILE: [REDACTED]

FEB 18 2015

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: SELF-REPRESENTED

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 cursive script that reads "Michael Shumway".

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 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)(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 that compelling reasons prevent his return to Pakistan. The director also noted that the U.S. Department of State issued its opinion on February 10, 2014, recommending that the applicant’s request for adjustment of status in the United States be denied because the applicant had presented no compelling reasons why he cannot return to Pakistan. *See Director’s Decision*, dated May 23, 2014.

The director also denied the application of the applicant’s spouse [REDACTED], and his children [REDACTED], who each submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) under Section 13 as dependent derivatives of the applicant. The director issued separate decisions denying these applications. These dependents have each filed a Form I-290B, Notice of Appeal or Motion appealing the decision. The AAO will issue a separate decision for each of the dependents.

On appeal, the applicant submits a Form I-290B, Notice of Appeal or Motion, indicating that he is appealing the decision of the director to the AAO. The applicant submits a statement and country condition information on Pakistan in support of the appeal.

The AAO conducts appellate review on a *de novo* basis. 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).

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.

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.

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 this matter, the record reflects that the applicant was admitted into the United States in an A-1 nonimmigrant status on April 18, 2008, and that he thereafter served as Consular Attaché for the [REDACTED] Texas, until his status was terminated by the U.S. Department of State on October 25, 2012. *See Record of Sworn Statement by [REDACTED] dated March 19, 2014; See also, a copy of U.S. Department of State Office of Foreign Missions; Notification of Termination, dated November 12, 2012.* The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on November 21, 2012. 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)(i) of the Act but no longer held that status at the time he filed his application for adjustment on November 21, 2012.

The issues before the AAO in the present case are, therefore, whether the record establishes that the applicant has compelling reasons that precluded his return to Pakistan and that his adjustment would serve U.S. national interests – requirements set forth in section 13(b) of the 1957 Act.

In an affidavit submitted by the applicant in support of his adjustment application, he indicated the following as the compelling reasons why he and his family cannot return to Pakistan:

“I have been in USA for more over four years. I have my family with me. My family is well settled in USA. Given the present law and order situation in Pakistan, my family is not comfortable in returning to Pakistan. They feel for safety of their life in Pakistan as they hear about suicide bombings and terrorist attacks even in the capital of the country which was considered as very safe place to live. They are concerned that they could be targeted owing to their stay in USA and their liking for USA.”

At his adjustment of status interview on March 19, 2013, the applicant stated under oath before an immigration officer that the main reason he does not want to return to Pakistan is the “dangerous life threatening situations in Pakistan.” The applicant added that his children are afraid to go back to Pakistan due to “the lack of opportunities” and “insecure situations.” On appeal, the applicant submitted a statement asserting that in addition to the fears he has articulated in his prior statements – general insecurity and terrorist attacks in the country – the applicant fears that his family may be targeted for kidnapping for ransom because they have lived away from Pakistan for a prolonged period and were brought up in a culture that is “a complete opposite of Pakistani culture.” The applicant indicated that his children’s “foreign accent” is very easily distinguishable from the local accent, which would make them “a prime target for kidnappers.” The applicant submitted various newspaper articles highlighting the level of violence in the county and the difficulties encountered by law enforcement officials to bring the violence under control.

The AAO has reviewed the applicant's statements, and country condition information submitted on appeal, and finds the evidence insufficient to establish compelling reasons that preclude the applicant from returning to Pakistan. The AAO notes the applicant's desire to remain in the United States because of the insecurity in Pakistan. However, the fear of general insecurity in Pakistan or the general threat of terrorism is not sufficient compelling reason under Section 13 as the threats are directed to the general public and not specifically to the applicant and his children based on the applicant's past government employment or his duties and activities as Consular Attaché at the [REDACTED] Texas. In the instant case, the record is insufficient to establish that the applicant in his role as a returning diplomat would be at greater risk of harm in the hands of the government of Pakistan or other entities there because of his past government employment, political activities or other related reason. The evidence of record in this case 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.

In this case, the evidence of record does not demonstrate that the applicant, his wife and his children would be specifically targeted by extremist or other terrorist groups operating in Pakistan because of the applicant's prior employment with the government of Pakistan. The AAO also acknowledges that the applicant's children may encounter some difficulties 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. It is further noted that the U.S. Department of State issued its opinion recommending that the applicant's request for adjustment of status under Section 13 be denied because the applicant had not established compelling reasons that preclude his return to Pakistan.¹

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. 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, the AAO finds that the applicant is not eligible for adjustment under Section 13. 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.

¹ See Form I-566, Interagency Record of Request.