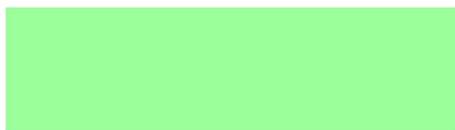


(b)(6)

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

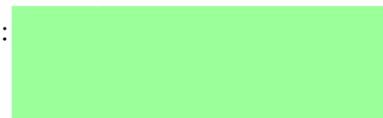


U.S. Citizenship  
and Immigration  
Services

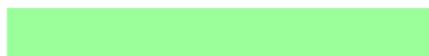


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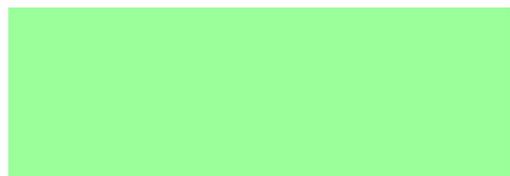


IN RE: Applicant:



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 cursive script, appearing to read "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 of India and a 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 that compelling reasons 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 had presented no compelling reasons why he cannot return to Pakistan. *See Director's Decision*, dated May 30, 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 derivative dependents of the applicant. The director issued separate decisions denying these applications. The applicant's spouse, Shahida Abbas has filed a Form I-290B, Notice of Appeal or Motion appealing the decision. The AAO will issue a separate decision to the applicant's spouse.

On appeal, counsel asserts that the director misinterpreted the law governing Section 13, imposed its own standard at the time of adjudicating the applicant's request and based its decision entirely on the U.S. State Departments recommendation rather than of the case. Counsel indicated that a brief in support of the Appeal will be submitted to the AAO within 30 days of filing the appeal. The record however, does not reflect the receipt of an appeal brief and/or additional evidence. We will therefore consider the record complete and will adjudicate the matter based on the evidence of record.

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, (the 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. The applicant was admitted into the United States in A-2 status on or about August 7, 1999 and thereafter served as Accounting Officer and [REDACTED] California, until the end of his term on or about July 16, 2012. See *Sworn Statement of* [REDACTED] dated May 23, 2006; *Statement from* [REDACTED] *Administrative Attaché, Consulate General of Pakistan,* [REDACTED] California, dated June 4, 2008. The applicant filed the Form I-485,

Application to Register Permanent Residence or Adjust Status, on June 24, 2008. Therefore, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic or semi-diplomatic status under section 101(a)(15)(A)(ii) of the Act but no longer held that status at the time of his application for adjustment of status on June 24, 2008.

The issues before the AAO in the present matter 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 the U.S. national interest – requirements set forth in section 13(b) of the 1957 Act.

The AAO now turns to a review of the evidence of record. 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). 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).

The record contains statements from the applicant indicating the reasons, which he considers compelling as to why he and his family do not want to return to Pakistan. At his adjustment of status interview on July 16, 2012, the applicant indicated the following under oath to an immigration officer that the reasons he does not want to return to Pakistan are (1) he belongs to a minority Islamic sect in Pakistan – the Shias and that the majority Sunnis and the Taliban are persecuting and killing the Shias because of their minority status; (2) one of his sons had a serious medical problem that was treated and resolved in the United States and he wants his family to remain in the United States so that his son will continue to get the needed medical attention, which will not be available to him in Pakistan; and (3) his children will have difficulty adjusting to living in Pakistan after a prolonged period of absence from the country and their exposure to western-style education and standard of living.

Other statements in the record reiterated essentially the same reasons articulated by the applicant at his adjustment of status interview. In a July 16, 2012 statement, in addition to the “killing/massacre” of Shias in Pakistan, the applicant stated that the majority Sunnis have “blocked all the ways and means for Shias to arise in society, particularly in the educational and the financial fields.” The applicant indicated that under these circumstances, his children will not be able to “adjust themselves in that environment especially after their exposure to the American values of freedom, secularism, equality – gender and otherwise, individual rights and opportunities.”

On appeal, on the Form I-290B, counsel contends that the director erred as a matter of law in denying the application to adjust status under Section 13 of the Act. Counsel asserts that United States Citizenship and Immigration Services (USCIS) misinterpreted the Act by stating that Section 13 is intended to shield returning diplomats from the specific actions of the government of the country that accredited the diplomat. Counsel also asserts that this interpretation differs significantly from “political reasons” 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 the diplomats. Counsel claims that USCIS imposed its own novel standards at the time of adjudicating the application by requiring political reasons be limited to specific actions of the government of the country that accredited the diplomat. Counsel is of the opinion that the recent country condition information on

Pakistan by the U.S. Department of State supports a finding of compelling reason that precludes the applicant from returning to Pakistan. In addition, counsel asserts that USCIS based its decision entirely on the U.S. State Department recommendation rather than conducting its own analysis and specific grounds for denial.

The AAO has reviewed the entire record and finds counsel's assertions on appeal not persuasive. The AAO views the U.S. Department of State's opinion as a recommendation and not binding on the AAO's *de novo* authority to review a case.

The AAO has reviewed the applicant's statements, counsel's assertions on appeal and country condition information submitted into the record, and finds the evidence insufficient to establish compelling reasons why the applicant cannot return to Pakistan. Contrary to the assertions of counsel, 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 keenly 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.

The AAO acknowledges the violent situation and lack of security in Pakistan caused in part by 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 persist. 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. We also note the applicant's desire to remain in the United States for the continued health, education and the overall wellbeing of his family, however, such reasons are not considered compelling within the meaning of Section 13. As indicated above, 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's government and/or because they would be targeted for their past specific role in working for that government. In this matter, the applicant has failed to submit sufficient credible evidence to establish that as a returning diplomat, that he would be at greater risk of harm in the hands of the government Pakistan or other entities there because of his past government employment, political activities or other related reasons. Thus, 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.

We further note 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. It is also 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.<sup>1</sup>

The eligibility for relief under Section 13 of the Act 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. In this case, the record contains an unadjudicated Application for Asylum and for Withholding of Removal, Form I-589. 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 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.

<sup>1</sup> See Form I-566, Interagency Record of Request.