



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUL 22 2015**

FILE: [REDACTED]
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The director, National Benefits Center, denied the application to adjust status under Section 13 of the Immigration and Nationality Act (“Section 13”). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO), and the matter is now before the AAO on a second motion to reopen. The motion will be granted, and the previous decision of the AAO dismissing the appeal will be affirmed. The application will remain denied.

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)(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 establish that he performed diplomatic or semi-diplomatic duties. *Decision of National Benefits Director*, dated March 25, 2014.

On August 11, 2014, we determined that the applicant failed to establish that he performed duties for the government of Pakistan that are diplomatic or semi-diplomatic in nature and dismissed the appeal accordingly.

On November 4, 2014, the applicant filed a Form I-290B, Notice of Appeal or Motion.. The applicant asserted that his duties at the Consulate General of Pakistan in [REDACTED], [REDACTED], were semi-diplomatic in nature. The applicant submitted affidavits, statement from former Consul General of Pakistan in [REDACTED] and brief from counsel. Upon review of the evidence of record, we granted the motion, reopened the matter, considered the evidence submitted by the applicant and found the evidence insufficient to overcome the grounds of our dismissal of the appeal. We affirmed our previous decision.

On December 5, 2014, the applicant submitted the current motion to reopen. The applicant submits an affidavit, a letter from [REDACTED] and a brief from counsel in support of the motion.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

On motion, counsel asserts that the applicant served as an [REDACTED] at the Consulate General of Pakistan in [REDACTED] and was performing diplomatic and semi-diplomatic duties at the consulate. The applicant refers to a statement dated August 19, 2014, from [REDACTED] in support of his assertion. The applicant claims that, in his capacity as assistant consul he had negotiated trade and commercial agreements with top state and local officials representing his country, and that as the “second man” at the consulate, he was delegated with diplomatic and administrative tasks of

¹ [REDACTED]

Consul General in his absence. The applicant contends that these duties were both diplomatic and semi-diplomatic in nature.

The statement from Mr. [REDACTED] in essence repeats the same claims on two previous statements from former Consul General of Pakistan in [REDACTED] regarding the applicant's position and duties. These prior statements are already submitted into the record. Mr. [REDACTED] who was not the Consul General at the time the applicant served, summarizes the applicant's prior positions and service with the Pakistani Ministry of Foreign Affairs, [REDACTED] Pakistan before coming to the United States. The applicant's prior positions at the Ministry of Foreign Affairs in Pakistan has no bearing on his position and as an Administrative Assistant at the Pakistan Consulate in [REDACTED] and does not establish that he performed diplomatic or semi-diplomatic at the Consulate. Mr. [REDACTED] states that the applicant was posted to the United States as a [REDACTED] and that the applicant was in charge of "all consular duties with the Consulate General," that he also worked with official delegations from Pakistan and performed many useful political, commercial and diplomatic tasks, but provides no more detail about his duties as a consular assistant.

We further note that Mr. [REDACTED] designation of the applicant's position as Consular Assistant is inconsistent with his official designation by the government of Pakistan. In its "Notification of Termination of Employment" to the U.S. Department of State, signed by Dr. [REDACTED] Dr. [REDACTED] who was the Consul General of Pakistan at the time, listed the applicant's job title/position as Administrative Assistant. This designation is consistent with the designation by the U.S. Department of State on the applicant's G-2 visa and on his consular identification card. 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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the applicant claims that the applicant's duties were both diplomatic and semi-diplomatic in nature, this claim is not supported by independent, objective evidence. The record does not contain an official redesignation of the applicant's position to Consular Assistant. The record does not contain a detailed description of the applicant's actual role and duties as Administrative Assistant and/or Consular Assistant at the Consulate and whether the duties involved clerical and administrative duties or duties that are diplomatic or semi-diplomatic.

The record does not show that the applicant had any formal advisory or decision-making role at the Consulate or that he represented Pakistan before the United States government or any foreign government in any official capacity. Nor does the record establish that the applicant was "the second man" at the Consulate delegated to perform diplomatic duties of the Consulate in the absence of the Counsel General. We acknowledge that the inclusion of the term semi-diplomatic in 8 C.F.R. § 245.3 indicates that those accredited aliens not engaged in diplomatic duties, but who perform duties in direct support and furtherance of such activities, may also be considered for adjustment of status under Section 13. However, 8 C.F.R. § 245.3 provides that 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. We also note that 8 C.F.R. § 245.3 does not provide that duties that are not considered custodial, clerical or menial are necessarily diplomatic or semi-diplomatic duties. The record in this matter is insufficient to establish that the applicant

performed semi-diplomatic duties in support of the Consulate General of Pakistan in Chicago rather than clerical and/or administrative duties.

In our previous decisions, we found the applicant ineligible for adjustment of status under Section 13 of the Act because he had not established that his duties at the Consulate General of Pakistan in [REDACTED] were diplomatic or semi-diplomatic in nature. On motion, the applicant has failed to overcome the bases of our previous decisions. Therefore we affirm our previous decisions.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has failed to meet that burden. Accordingly, the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is granted. The previous decision of the AAO dismissing the appeal will be affirmed. The application will remain denied.