U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-A-K-A-

DATE: NOV. 10, 2015

APPEAL OF NATIONAL BENEFITS CENTER DECISION

APPLICATION: FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS

The Applicant, a native and citizen of Pakistan, seeks to adjust status to Lawful Permanent Resident. *See* Section 13 of the Act of September 11, 1957, Pub. L. No. 85-316, 71 Stat. 642, *amended by* Pub. L. No. 97-116, 95 Stat. 161 (1981), 18 U.S.C. § 1255b. The Director, National Benefits Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the application because the Applicant failed to establish compelling reasons why he cannot return to Pakistan. The Director also noted that on March 4, 2014, the U.S. Department of State issued its opinion recommending that the Applicant's request for adjustment of status under Section 13 of the Act be denied because the Applicant presented no compelling reasons why he is unable to return to Pakistan. *Decision of the Director,* dated June 9, 2014

On appeal, the Applicant submits a brief and additional evidence. The Applicant asserts that the Director erred as a matter of law by not applying the dictionary definition of "compelling reasons," and further states that even under the strict standard used by the Director, he has compelling reasons that preclude his return to Pakistan because he has received several threats to his life and safety from the Taliban.

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 Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.
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> (b) If, after consultation with the Secretary of State, it shall appear to the satisfaction of the Attorney General 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 Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

8 U.S.C. § 1255(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(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, if they establish that there are compelling reasons why the applicant or the applicant's immediate family member is unable to return to the country represented by the government that accredited the applicant and that adjustment of the applicant's status 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).

A review of the record establishes the Applicant's eligibility for consideration under Section 13. The Applicant was admitted in A-2 status on or about November 11, 2007 and served as an at the Embassy of Pakistan in until the end of his assignment on March 4, 2013. The Applicant states that he performed duties that were supportive of the Ambassador's diplomatic duties as he was sometimes assigned to protocol duties receiving high level visitors around the world on behalf of the Ambassador. The Applicant performed duties that were semi-diplomatic in nature. His status at the Pakistan Embassy in was terminated by the U.S. Department of State on March 4, 2013 and he filed his adjustment of status application on March 15, 2013. The Applicant was therefore 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 of his application for adjustment of status on March 15, 2013, as required by Section 13 of the Act.

As such, the only issues before us are whether the record also establishes that the Applicant has compelling reasons that precluded his return to Pakistan and that his adjustment would serve U.S. national interests – the requirements of section 13(b) of the Act.

In the statements provided by the Applicant in support of the application and during the adjustment of status interview, the Applicant states that he cannot return to Pakistan because he is from the Federally Administered Tribal Area (FATA) of Pakistan and he has been threatened by the Taliban. He states that where his home is located, is known to be a dangerous area because of the Taliban's persecution of civilians and the ongoing conflict between Shia and Sunni Muslims there. The Applicant asserts that he and his family have received several threats from the Taliban because of his past employment with the government of Pakistan in the United States. He also states that the Taliban is aware of his diplomatic duties in the United States and views him as a "CIA Agent" who is working for the United States government. The Applicant further states that he wants to remain in the United States so that his children can continue their studies.

On appeal, the Applicant reasserts the claims he had made previously – that he has received several threats from the Taliban because of his employment at the Embassy of Pakistan in the United States and that the Taliban bombed his home while he and his family were out of the country. He indicates that on January 22, 2013, a military commander of the terrorist group Lashkar-e-Taiba, a group linked to the Taliban, threatened him and his family if they did not pay them one million dollars and provide ten people to join their ranks. The Applicant states that the Taliban imputed a "pro-American political opinion" to him and threatened to harm him and his family if he returns to Pakistan. The Applicant states that when he traveled to in October 2013 to visit his sick mother, the Taliban knew that he was in the country, and a Tehrik-e Taliban Pakistan commander sent a threatening message to his home in The threatening message was forwarded to him in by his watchman and he was forced to leave Pakistan before his intended date of departure. The Applicant also asserts that one of his sons was the victim of two attempted kidnappings when his son was visiting his home town of His son left for where he remained for some time before returning to the United States. During his stay in the Applicant's son requested protection from the government of Pakistan because he felt that the attempted kidnappings were directed to him because of his father's employment with the government of Pakistan in the United States. The Applicant's son states that he traveled to the United States because the government of Pakistan did not provide him the protection he requested. There is no indication in the record that the Taliban or other terrorist groups threatened or harmed the Applicant's son while he was in

In support of these assertions, the Applicant submits a copy of the 2013 U.S. Department of State Country Report on Human Rights Practices for Pakistan and copies of various news articles from 2012 through 2014 describing attacks by the Taliban against civilians, Pakistan security forces, government employees, and foreign aid workers. The Applicant also submits photocopies of threatening statements from the Taliban, letters from friends in Pakistan, and a statement from the caretaker of his house in Pakistan as evidence that he and his family are being targeted by the Taliban.

The Applicant contends that the events noted above and the facts presented are sufficient to establish compelling reasons why he cannot return to Pakistan. The Applicant further contends that he and his family are "stateless," with a well-founded fear of persecution in Pakistan based upon a pro-American political opinion imputed to him.

Upon review of the Applicant's statements, other documents submitted in support of the application and on appeal, and country condition information, we find that the Applicant has not established compelling reasons related to political changes that render him unable to return to Pakistan. As indicated above, the legislative history of Section 13 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.

The Applicant claims that he and his family were threatened by the Taliban because of his past employment with the government of Pakistan. Although the Applicant has established that he has been threatened by the Taliban, the evidence is insufficient to establish that he cannot return to Pakistan due to compelling reasons related to political changes in Pakistan that rendered him "stateless or homeless" or at risk of harm following political upheavals there. The Taliban is a non-state actor that has been operating in Pakistan and in the FATA region before the applicant came to the United States in 2007.

2007 country condition reports state that Taliban militants and their foreign supporters mounted suicide attacks and engaged in vigilantism, including murder, in the tribal areas as well as in settled districts of the North West Frontier Province, Baluchistan, and Islamabad. *See U.S. Department of State Country Report on Human Rights Practices, Pakistan for 2007.* The U.S. Department of State reports that the Tehrik-e Taliban Pakistan (TTP) formed in 2007 in opposition to Pakistani military efforts in the FATA. The group formed from disparate militant tribes in the FATA who "agreed to cooperate and eventually coalesced into TTP." *U.S. Department of State, Office of the Coordinator for Counterterrorism, Country Reports on Terrorism 2010*, August 18, 2011. It operates in the FATA, where it trains and deploy its operatives, with a goal of "usurping the Government of Pakistan by waging a campaign of terror against the civilian leader of Pakistan, its military, and against NATO forces in Afghanistan," and it has a "symbiotic relationship" with al-Qa'ida. *Country Reports on Terrorism 2010*, August 18, 2011.

Both al-Qa'ida and the groups in the FATA that joined to form the TTP have been operating in Pakistan since before the Applicant came to the United States on November 11, 2007. The U.S. Department of State reported that in 2002, the "liberation of Afghanistan from the Taliban regime eliminated al-Qaida's principal base and sanctuary," and "[f]leeing terrorists also caused trouble in Pakistan and other states through which they transited." In January 2002, the Government of Pakistan arrested nearly 500 suspected al-Qa'ida and Taliban members and banned five extremist organizations. *U.S. Department of State, Office of the Coordinator for Counterterrorism, Patterns of Global Terrorism, April 30, 2003.* According to a 2005 report issued by the Department of State:

> After the two near-miss assassination attempts against President Musharraf in December 2003, groups linked to al-Qa'ida tried to assassinate a corps commander in Karachi in June, and the Finance Minister (now Prime Minister) in July. . . . Al-Qa'ida declared the Government of Pakistan to be one of its main enemies, and called for its overthrow.

> The Government of Pakistan continues to pursue al-Qa'ida and its allies aggressively through counterterrorist police measures throughout the country and large-scale military operations in the Federally Administered Tribal Areas (FATA) along the rugged Afghanistan-Pakistan border.

U.S. Department of State, Office of the Coordinator for Counterterrorism, Country Reports on Terrorism, April 27, 2005.

While country condition reports indicate that the Taliban and other militant groups have expanded their activities beyond the tribal areas to other parts of the country, the government of Pakistan has maintained control and continued to launch attacks against these groups. According to U.S. Department of State reports issued in 2013 and 2014, militant and terrorist activity continued, and the government took actions to weaken terrorist ties around the country and prevent recruitment by militant organizations, conducting counterinsurgency and counterterrorism operations in FATA and implementing countermeasures against the TTP and other groups in the tribal areas as well as urban areas such as Islamabad and Karachi. *See U.S. Department of State Country Reports on Human Rights Practices - Pakistan* for 2013 and 2014.

We note that the Applicant's home is in the FATA region of Pakistan, a stronghold of the Taliban, and the government Pakistan has been unable to exercise control over this area of the country. Further, the Applicant has been threatened by the Taliban, and conditions in [redacted] are dangerous given the presence of the Taliban and other militant groups. However, the Applicant has not established that he is unable to return and reside in another part of Pakistan, even if he is unable to return to his home in [redacted] because he is at risk of harm there.

We acknowledge the violent situation and lack of security in Pakistan caused in part by political instability and the terrorist and other extremist groups operating there and that, despite the government's counterinsurgency and counterterrorism operations, violent attacks by these groups persist. However, as discussed above, the legislative history of Section 13 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. As the evidence in the record shows, the Taliban was already operating in Pakistan before the Applicant came to the United States. The Applicant has not established that he is at risk of harm due to political change or upheaval that occurred while he was in the United States in diplomatic status or, even if he is at risk of harm in his home in the FATA, that he is unable to return and reside in another part of Pakistan.

The Applicant's desire to remain in the United States so that his children can complete their education is also not a compelling reason under Section 13 because it does not relate to political change that renders diplomats and foreign representatives at risk of harm following political upheavals. We acknowledge the Applicant's desire to remain in the United States for the education and general wellbeing of his family and the hardship they may encounter upon returning to Pakistan. However, general inconveniences and hardships associated with relocating to another country are not compelling reasons

under Section 13. As set forth above, 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.

For the reasons discussed above, we find that the Applicant is not eligible for adjustment of status under Section 13. He has not established that compelling reasons within the meaning of Section 13 prevent his return to Pakistan. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Pakistan, the question of whether adjustment of status would be in the national interest need not be addressed.

Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of M-A-K-A-*, ID# 13090 (AAO Nov. 10, 2015)