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**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-A-S-

DATE: JAN. 19, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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. We dismissed a subsequent appeal. The matter is now before us on a motion to reopen and reconsider. The motion will be denied.

In a decision dated May 30, 2014, the Director denied the application for adjustment of status after determining that the Applicant had not established compelling reasons why he is unable to 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 be denied because the Applicant had presented no compelling reasons why he cannot return to Pakistan.

In a decision dated February 18, 2015, we determined that the Applicant had not met his burden of establishing eligibility for adjustment of status under Section 13 of the Act. Specifically, we determined that the Applicant had not established compelling reasons that prevent his and his family's return to Pakistan and dismissed the appeal accordingly.

The Applicant timely filed a motion to reopen and reconsider requesting that we reconsider our decision based on the evidence he submits on motion. In support of said motion, the Applicant submits a statement; news articles from 2012 through 2015 discussing sectarian violence in Pakistan; copies of the U.S. Department of State [redacted] and [redacted] [redacted]; copies of [redacted] in [redacted] and [redacted] a copy of a [redacted] [redacted] briefing; a copy of [redacted] on [redacted] from the [redacted] dated [redacted] 2011; and other country condition information previously submitted into the record.

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 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).

On motion, the Applicant states that he cannot return to Pakistan because he fears that (1) the Sunni-led Taliban and other extremist groups in Pakistan will harm him because he is a Shiite Muslim and (2) the current government of Pakistan will harm him because he served under the administration of former president Pervez Musharraf and because he is a Shiite Muslim. The Applicant states that he fears extremist groups such as Sipah-e-Sahaba Pakistan (SSP), a Sunni militant group, and its offshoot, Lashkar-e-Jhangvi (LeJ), and the Tehrik-e-Taliban Pakistan (TTP), and states that LeJ is now part of the current government of Pakistan. The applicant does not claim and the record does not indicate that the Applicant had been targeted or harmed by these extremist groups.

In our prior decision, we also found the Applicant's claim that he desired to remain in the United States so that his son can continue to receive medical care and because of hardship to his children, including difficulty adjusting to living in Pakistan after a prolonged absence and their exposure to a western-style education and standard of living, did not amount to compelling reasons rendering him and his family unable to return. We found that his desire to remain in the United States for the health and general wellbeing of his children was not a compelling reason related to political change or upheaval as required by Section 13 of the Act. On motion, the Applicant has not made any further assertions concerning his son's medical care or any difficulties his children would face adjusting to life in Pakistan, and we find no error in our prior determination that the Applicant's desire to remain in the United States for the continued health, education and the general wellbeing of his family is not considered a compelling reason within the meaning of Section 13.

In the various statements submitted by the Applicant in support of his adjustment of status application and on motion, the Applicant states that as a member of the Shiite minority, he is at risk of harm by the Sunni-led Taliban and other anti-Shia extremist groups operating in Pakistan. The Applicant submits country condition information, including news articles from various sources dating back to 2006 that detail various acts of violence perpetrated against the Shiites in Pakistan by the Taliban and other extremist groups. The Applicant asserts that because of these conditions, he and his family will be unable to safely return to Pakistan.

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The news articles that the Applicant submitted indicate that the Sunni-Shiite schism dates back to the seventh century and is at the heart of current sectarian violence between the Sunnis and the Shiites. The articles report that although most Sunnis and Shiites live peacefully together, extremists from both sides have targeted each other over the past three decades, but in recent years, Sunni attacks on Shiites have been far more common. *See* [REDACTED] [REDACTED] 2012. The [REDACTED] reports that while sectarian bloodshed occurs throughout Pakistan, attacks have been concentrated in [REDACTED] where more than 300 Shiites, many from the ethnic [REDACTED] community, have been killed since 2008. [REDACTED], 2015.

The record indicates that the Applicant arrived in the United States on [REDACTED] 1999, to serve as an [REDACTED] at the Consulate General of Pakistan in [REDACTED] California, and he remained in that position until 2012. At the time he first arrived in the United States in 1999, incidents of sectarian violence, including attacks on Shiite Muslims in [REDACTED] and other provinces, were reported in Pakistan. The U.S. Department of State reported that in 1996, sectarian violence, including bombings, occurred throughout the year in [REDACTED] and in the [REDACTED] resulting in 175 deaths, and in 1997, deadly incidents of sectarian violence, particularly in [REDACTED], surged, with 200 people dead that year. *U.S. Department of State*, [REDACTED] [REDACTED] and [REDACTED]. In 1999, the year the Applicant came to the United States, the sectarian and political violence remained a problem as Sunni and Shi'a extremists conducted attacks against each other, primarily in [REDACTED]. *See U.S. Department of State*, [REDACTED] and [REDACTED].

The Applicant states that he fears extremist groups in Pakistan, including the SSP, LeJ, and TTP. We note that both the SSP and LeJ have been operating and carrying out deadly attacks against Shiites in Pakistan since before the Applicant came to the United States in 1999. The report from [REDACTED] submitted by the Applicant states that the SSP was formed in 1985, and a decade or so later, a breakaway faction of the group went on to form the LeJ. The SSP was banned in 2002 by President Musharraf, but was subsequently re-established under the new title Ahl-e-Sunnat Wal Jama'at (ASWJ) before being banned again in 2012. [REDACTED] reports that sporadic sectarian violence between Pakistan's Sunni and Shi'a militant groups have been going on for decades, but recently, the violence has been overwhelmingly one-sided, as Sunni militant groups have targeted the [REDACTED] community in [REDACTED]. *See* [REDACTED] [REDACTED] 2014. According to the [REDACTED] and [REDACTED] reports, attacks by extremist groups against Pakistan's Shi'a have been on the increase since the 1980s, but the killings increased significantly in 2013, with attacks mostly carried out by three extremist Sunni militant groups – SSP, LeJ, and TTP.

The U.S. Department of State reports that with the election of a new government in 2013, Pakistan continued to confront terrorist groups, including the TTP, the [REDACTED] Taliban, and the LeJ, all of whom mounted attacks against police, military and security forces, or engaged in sectarian violence. Security forces intercepted large stockpiles of weapons and explosives and discovered bomb-making facilities and sophisticated telecommunication networks. Pakistan continued to arrest terrorists and

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initiate prosecutions throughout 2013. *U.S. Department of State*, [REDACTED]
[REDACTED]

The country condition reports and the news articles submitted by the Applicant indicate that the sectarian violence between Sunnis and Shiites has been going on for decades, and the government of Pakistan has maintained control while conducting counterterrorism actions against the extremist groups. Further, although the documentation on the record indicates that sectarian attacks against Shi'a in Pakistan have increased in recent years, they have been concentrated in the province of [REDACTED]. Although the Applicant states that he fears returning to Pakistan because of violence by extremist groups against the Shiite minority, it is not clear that he cannot return to [REDACTED] where he resided before coming to the United States, or reside safely in another part of Pakistan. Further, the record indicates that since coming to the United States in 1999, the Applicant has returned to Pakistan on four separate occasions, most recently in 2013. The Applicant does not state there were any threats or attacks against him or his family by any of the Sunni extremist groups during any of these visits. Although the Applicant fears for his safety and that of his family due to the conditions in Pakistan, he has not established that the situation there constitutes a compelling reason that renders him or his family members unable to return to Pakistan. Further, the harm that the Applicant fears is related to sectarian violence that was ongoing when the Applicant was assigned his diplomatic post in the United States. This situation does not amount to political change or upheaval within the meaning of Section 13 that renders the Applicant unable to return to Pakistan.

We acknowledge that the security situation in Pakistan remains a problem and that sectarian violence against the Shi'a minority has increased. 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. Here, the Applicant has not established that he is at greater risk of harm due to political change or upheaval that occurred while he was in the United States in diplomatic status or that he faces a threat that renders him unable to return. Based on the evidence of record, the Applicant has not established that he is unable to return to Pakistan due to political change that occurred while he was in the United States in diplomatic status that renders him, a returning diplomat, at risk of harm.

On motion, the Applicant also states that he fears that the current government of Nawaz Sharif will target him for harm because he served under the government of Pervez Musharraf, who overthrew Mr. Sharif in a military coup d'état, and because he is a Shiite Muslim. The Applicant claims that some of the anti-Shi'a extremist groups that were banned by President Musharraf have now been allowed to operate openly by the current government and are part of the administration.

The Applicant has not provided sufficient credible and probative evidence to substantiate his claim that he would be targeted by the current government of Pakistan because he served under the administration of former President Musharraf, or that individuals who served under Mr. Musharraf or supported him are at greater risk of harm. The Applicant has also not provided evidence to substantiate his claim that the government of Pakistan would target him because he is a Shiite Muslim. The country condition reports and news articles submitted by the Applicant discuss the

sectarian violence between the Sunni and Shiites and attacks on other religious minorities by extremist groups operating in Pakistan. The reports do not indicate that the current government has targeted members of the Shiite minority, and, as discussed above, the government continues to take measures to combat terrorist groups, including the Sunni militant groups the Applicant fears.

The documentation on the record also does not indicate that individuals who served in the Musharraf government face any specific threat. Further, we note that the Applicant worked for the Ministry of Foreign Affairs from 1985 to 2012, serving under several different governments, including Mr. Sharif's government when he was Prime Minister from 1997 until his government was overthrown by Mr. Musharraf on October 12, 1999. Pervez Musharraf served as president of Pakistan from 2001 until 2008 and was succeeded by Asif Ali Zardari, who served as the president from 2008 to 2013. The Applicant was assigned his diplomatic post in the United States in August 1999 under the administration of Nawaz Sharif, the current prime minister, and completed his service in 2012 under the administration of Asif Ali Zardari. The record establishes that the Applicant served under Mr. Musharraf from October 1999 through 2008 and did not work under Musharraf's regime for most of his career.

For the reasons discussed above, we find that the Applicant is not eligible for adjustment of status under Section 13. He has not established compelling reasons within the meaning of Section 13 that prevent his return to Pakistan. The Applicant has not submitted sufficient credible and probative evidence to overcome the basis of our prior decision.

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 motion will be denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-A-S-*, ID# 13568 (AAO Jan. 19, 2016)