



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: Office: NATIONAL BENEFITS CENTER
JAN 06 2014

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,

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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The director denied the application for adjustment of status after determining that the applicant had failed to demonstrate compelling reasons that prevent his return to Pakistan. *See Director's Decision*, dated April 3, 2012.¹

The director also denied the application of the applicant's children ([REDACTED]) who each also submitted an Application to Register Permanent Residence or Adjust Status (Form I-485), seeking to adjust status under Section 13 as derivative dependents of the applicant. The director issued a separate decision denying each application. The dependents have not filed an appeal from the director's decision.

On May 7, 2012, counsel for the applicant submitted a Form I-290B, Notice of Appeal or Motion, a brief, an affidavit from the applicant dated May 3, 2012 and country condition information on Pakistan in support of the appeal.²

¹ The record reflects that the director, New York District Office initially endorsed the passport of the applicant and his dependents with a temporary I-551, evidence of Permanent Residence Status for one year beginning August 4, 2006 through August 3, 2007. On December 20, 2006, the director issued a Notice of Intent to Rescind (NIR) to the applicant indicating that the Service's approval of the I-485 application was in error. The applicant timely responded. On July 18, 2007, the director issued a Notice of Rescission (NOR), rescinding the approved Form I-485. The director erroneously indicated that the applicant failed to timely respond to the NIR as the reason for the rescission. The applicant timely filed an objection to the NOR and the basis of the director's finding. On August 7, 2007, the director withdrew the NOR and *Sua Sponte* reopened the Form I-485 by a Service Motion dated November 23, 2007. On April 3, 2013, the director denied the application finding that the applicant had failed to establish compelling reasons why he cannot return to Pakistan.

² Counsel indicated at Part 2F of the Form I-290B that he was filing a motion to reopen and a motion to reconsider. The record however, does not contain a decision by the AAO for which to reopen and reconsider. The AAO will accept the Form I-290B as an appeal of the director's decision to deny the Form I-485 application and will adjudicate the matter as such. On Part 3 of the Form I-290B, Basis of the Appeal or Motion, counsel listed the names and the alien numbers of the applicant's dependents as part of the Form I-290B. Counsel did not submit a separate Form I-290B for each of the dependents. The AAO will accept the Form I-290B as it relates to the appeal of the applicant's case alone and not for the dependents. For each adverse decision, an applicant must submit a separate Form I-290B and associated fee. *See* 8 C.F.R. § 103.3(a)(1).

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.

A review of the record establishes the applicant's eligibility for consideration under Section 13 of the 1957 Act. The applicant was admitted into the United States on June 4, 1995, in a G-1 nonimmigrant status and thereafter served as the Private Secretary to the Ambassador, Pakistan Mission to the United Nations in New York until his term ended and his status was terminated by the U.S. Department of State on June 11, 1999. As the private secretary to the Ambassador, the applicant performed duties that were in support of the Ambassador's diplomatic duties. As such, the applicant performed duties that were semi-diplomatic in nature. The applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, was stamped received on December 7, 2005.³ Therefore, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(G)(i) of the Act but no longer held that status at the time he

³ The record reflects that applicant's Form I-485 application was initially received on August 24, 2000 but was stamped received by the Western Service Center (WAC) with a receipt date of December 7, 2005.

filed the application for adjustment of status on August 24, 2000.

The issues before the AAO in the present case 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 U.S. national interests – requirements set forth in section 13(b) of the 1957 Act. 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 a statement dated February 7, 2008, the applicant indicated that the compelling reasons that prevent his return to Pakistan relates to the past and present political and military unrest in Pakistan. The applicant stated that the government of [REDACTED] which was in power during his tenure of service in New York, was overthrown by the Pakistan military and that it will be very difficult if not impossible for him to return to Pakistan. In addition, the applicant stated that his daughter was diagnosed with a chronic mental condition, that she is receiving quality medical treatment in the United States and that she will not be able to receive such medical treatment in Pakistan because of the limited resources in Pakistan. The applicant also stated that people in Pakistan do not recognize mental illness as a medical condition and that her daughter will face discrimination and abuse on account of her mental illness. The applicant further stated that he is concerned about the safety of his children especially his daughters living in Pakistan because of cultural and societal discrimination against women. The applicant also wants his children to continue their education in the United States because they have a greater opportunity for professional development in the United States. Finally, the applicant stated that his deceased wife is buried in Long Island, New York and that returning to Pakistan “would mean that I will forfeit the chance to go visit my wife’s grave when I need something more than pictures.”

At his adjustment of status interview before an immigration officer on January 24, 2008, the applicant stated the following as the compelling reasons that prevent his return to Pakistan: his deceased wife is buried in [REDACTED], New York, and he and his family will like to remain in the United States so that they can visit her grave; his daughter has a “mental medical condition” and she will receive a much better treatment here in the United States; his family have been away from Pakistan for a prolonged period of time and they would be perceived as “Americans” and would be targeted if they returned to Pakistan. Additionally, his children have lived most of their lives in United States and do not know any of the traditions, or culture of the day to day life of Pakistan.

On appeal, counsel submits a brief and additional statement from the applicant. The applicant claims on appeal that he was threatened and physically abused by some members of the military and their associates when he visited Pakistan in 1999. The applicant claims that the military wanted him to reveal some “confidential information” he acquired while serving as the [REDACTED] Pakistani Ambassador to the United Nations in New York. The applicant claims that he was specifically targeted by the military because of his services for the Pakistani Mission to the United Nations in New York. The applicant claims as a result of the incident in Pakistan in 1999, he fled the country in order to save his life and has not returned to Pakistan since 1999. The applicant further claims that some military official seized his property in Pakistan as punishment for his refusal to reveal “confidential information” in his possession to the military.

Counsel on appeal reiterates the same facts enumerated by the applicant on appeal as compelling reasons why the applicant cannot return to Pakistan. Counsel argues that as a result of the attacks and threats towards the applicant, the applicant fears persecution that renders him stateless. Counsel continues, “the members of the military and their associates who have illegally seized [the applicant’s] home, and all his property, still seek to harm the applicant and his family if they return to Pakistan.” *Counsel’s brief at p.4.*

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 has reviewed the applicant’s statements; counsel’s brief on appeal and country condition information submitted in support of the application and finds them insufficient to establish compelling reasons that prevent the applicant from returning to Pakistan. The AAO acknowledges the violent situation and lack of security in Pakistan caused in part by the 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 Pakistan persists. 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. The applicant has not provided any credible evidence to establish that he and his family will be specifically targeted by

extremist or terrorist groups or by the current government of Pakistan because of his past employment with the government of Pakistan.

The AAO also acknowledges the applicant's desire to remain in the United States for the continued medical treatment of his daughter, the continued education and professional development of his children and for the safety and the overall wellbeing of his children in the United States, however, the applicant has failed to demonstrate that he is unable to return to Pakistan based on compelling reasons related 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 AAO further acknowledges 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. The applicant has provided no credible and specific evidence to establish that he and his family are at greater risk of harm because of his past government employment, political activities, or other related reason. The applicant's desire to create a better life for his children in the United States is not a compelling reason under Section 13 of the Act. The evidence of record 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.

While counsel and the applicant claim on appeal that the applicant was threatened and physically harmed by some members of the Pakistani military and their associates while the applicant was visiting Pakistan in 1999, the record does not contain credible and objective evidence to substantiate the claims other than the applicant's own statements. The applicant does not provide substantive, objective and probative evidence to establish that individuals who served the government of Pakistan under the administration of ██████████ in the 1990s are being targeted or will be targeted by the Pakistani Military. Also, the evidence of record does not establish that former diplomats who are supporters of ██████████ are being targeted by the Pakistani Military on account of their government service, political activities or other related reasons. Furthermore, the applicant has presented no evidence documenting the "confidential information" he possessed which the military wanted and for which he was threatened with harm. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, the evidence of record in this case is insufficient to establish that the applicant in his role as a returning diplomat would be at greater risk of harm because of his past government employment, political activities or other related reason.

The eligibility for relief under section 13 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. 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 13.⁴ As the applicant has failed to demonstrate that there are compelling reasons that prevent

⁴ It is also noted that the U.S. Department of State recommended that the applicant's request for adjustment of status be denied because the applicant has presented no compelling reasons why he

his return to Pakistan, the question of whether his adjustment of status would be in the U.S. 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. He has failed to establish that there are compelling reasons that preclude his return to Pakistan. 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.