

AB

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED] Office: WASHINGTON DC

Date: APR 08 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as Permanent Resident Pursuant to Section
13 of the Act of September 11, 1957

ON BEHALF OF APPLICANT:

[REDACTED]

PUBLIC COPY

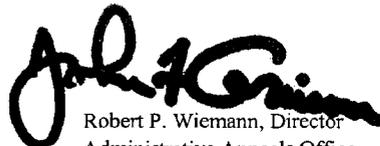
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Washington, D.C., and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru who is seeking to adjust his status to that of a lawful permanent resident under section 13 of the Immigration and Nationality Act (the Act) of 1957, Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Act.

The district director denied the application for adjustment of status after determining that the applicant was maintaining legal status at the time he submitted his application for adjustment of status.

On appeal, counsel contends that the district director erred in his decision because the applicant had resigned from his position at the Peruvian embassy as of August 1, 1992. He further asserts that the applicant was not provided with the evidence the director used in making his decision, nor was the applicant asked to provide evidence to corroborate the end of his employment. Counsel also states that there is no evidence that the director held a verbatim record of the interview or that the verbatim record was transcribed by the director.

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.

(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.

Pursuant to 8 C.F.R. § 245.3, eligibility for adjustment of status under section 13 of the Act 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 which 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 record contains the following documentation regarding the applicant's employment at the Peruvian Embassy in Washington D.C.:

1) An October 3, 1986 ministerial resolution indicating [redacted] appointment as an Administrative Director commencing on October 15, 1986.

2) A letter of resignation from the applicant to the Minister of State in the Office of Foreign Affairs, dated July 8, 1992, requesting a dismissal by resignation after the date of August 1, 1992.

3) An October 6, 1992 letter from the Chargé d'Affaires of the Peruvian Embassy stating "Mr. [redacted] . . . is a Diplomatic Staff Member uninterruptedly since October 16, 1986...." [Emphasis added]

4) A ministerial resolution dated October 26, 1992, stating that the applicant is entitled to a pension.

5) A November 24, 1992 Form I-88 signed by the Chief, Diplomatic Liaison Division, Department of State, indicating that as of November 24, 1992 the applicant was still employed as a civil attaché, Embassy of Peru, in A-1 status.

6) A June 28, 1993 record of sworn statement obtained on the date the applicant was interviewed regarding his application for adjustment of status. The statement was done in a question and answer format and each page is initialed by the applicant and by the interviewing officer. The last page contains a statement indicating

that all the answers contained in the forgoing statement "are true and correct to the best of my knowledge and belief and that this statement is a full, true and correct record of my interrogation." This statement is signed by the applicant and the officer who conducted the interview, and witnessed by the applicant's attorney of record. On page 3 of the statement the applicant was asked when the Department of State was notified of his termination. His response was "About April 30, two months ago."¹

An alien who has a nonimmigrant status under section 101(a)(15)(A) (i) or (ii) of the Act is to be admitted for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status. 8 C.F.R. § 214.2(a)

The applicant submitted an application for adjustment of status to lawful permanent resident under section 13 of the Act of September 11, 1957, on November 12, 1992. The record reflects that as of November 24, 1992 the applicant was still recognized by the Department of State as being employed in his official capacity. By his own admission in his sworn statement, and confirmed by the Department of State, the Department of State was informed of the applicant's termination on April 30, 1993. The evidence in the record confirms that the applicant was still in valid A-1 status when he applied for adjustment of status 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 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.

¹ A March 31, 2003 memo from the Assistant Chief of Protocol, Department of State confirms April 30, 1993 as the date the applicant's assignment was officially terminated with the Department of State.