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

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[REDACTED]

FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: JUL 23 2007

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]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Ethiopia 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 had failed to demonstrate he was unable to return to Ethiopia or that his adjustment would serve U.S. interests. *District Director's Decision*, dated April 5, 2001.

On appeal, counsel contends that the applicant would be at significant risk if he were to return to Ethiopia based on his former affiliation with the regime of Mengistu Haile Mariam, who ruled Ethiopia from 1977 until 1991. Counsel also asserts that the applicant would face persecution by the Ethiopian government based on his affiliation with groups politically opposed to that government. Moreover, he states that the applicant has medical problems that cannot be adequately treated in Ethiopia.

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 1957 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 AAO now turns to a review of the record before the director at the time of his April 5, 2001 denial of the application.

The record establishes the applicant's eligibility for consideration under section 13 of the 1957 Act. On February 1, 1993, the Chief of the Diplomatic Liaison Division in the Visa Office at the Department of State certified, on Form I-88, the applicant's employment as an attaché in A-1 diplomatic status at the Embassy of Ethiopia, Washington, D.C., from February 19, 1985 until April 9, 1992. Pursuant to the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(i) of the Act but no longer held that status at the time of his application for adjustment on May 15, 1992.

The issues before the AAO are, therefore, whether the record also establishes that the applicant, at the time of the district director's decision, had compelling reasons that precluded his return to Ethiopia and that his adjustment would have served U.S. national interests – the requirements of section 13(b) of the 1957 Act. At the time of his adjustment interview, the applicant stated that he was unable to return to Ethiopia because of his previous position as the General Secretary of an [REDACTED] under the Mengistu government. He asserted that individuals who worked with him had been jailed when Mengistu lost power and that some had died in prison. Moreover, the applicant contended that, as a member of the Amhara tribe, he would have no job prospects in Ethiopia. He also indicated that a spinal cord condition, for which he had previously required surgery, could not be treated in Ethiopia.

In support of his claims, the applicant has submitted a translated copy of a certificate issued by the Urban Dweller's Association of Metropolitan Addis Ababa, Higher 11, Kebele 05 Office, dated February 1, 1985, which states:

This is to certify that [REDACTED] whose residence is [REDACTED] [REDACTED] having been elected in 1971 (1978 Gregorian Calendar) and 1975 to Tir 1977 (1982 to Jan. 1985 Gregorian Calendar) to serve as a member of the administrative staff of the [REDACTED], after distinguished service has been sent abroad to serve in the Ethiopian Foreign Service.

The record also contains a statement, dated April 19, 2001, from [REDACTED], Chairman, Al Amhara People's Relief & Development Association (AAPRDA) identifying the applicant as a member and stating that, as an Amhara and a member of the All Amhara People's Organization (AAPO) or the AAPRDA, the applicant would be likely to face persecution in Ethiopia. The applicant has also submitted two August 2000 AAPRDA letters, one to then Secretary of State Madeline Albright and the other to [REDACTED], Special Advisor, Department of State, pointing to human rights abuses perpetrated by the Ethiopian government against targeted ethnic groups, including the Amhara people; a translated March 8, 1992 letter from a friend reporting that the applicant's coworkers in the Kebele are in prison and that he would have been imprisoned had he not already been in the United States; a January 12, 1992 letter issued by The Committee of Concerned Ethiopian-Americans alleging that the Ethiopian government is pursuing a policy of genocide against the Amhara people; a translated account of

a 1991 massacre of Amharas and Christians in Ethiopia from A Group of Concerned Ethiopians in Holland; a series of 1991-1992 newspaper articles on conditions in Ethiopia; a July 6, 1991 statement from the Coalition of Ethiopian Democratic Forces on the failings of a 1991 London peace conference; the June 18, 1991 testimony before the House Subcommittee on Africa of Yonas Deressa, President of the Ethiopian Refugees Education and Relief Fund, and Goshu Wolde, former Foreign Minister of Ethiopia; and a Joint Motion for a Resolution in the European Parliament, dated June 12 1991, that, in part, condemns the violations of human rights committed by those involved in the overthrow of Mengistu.

The AAO notes that the record contains a January 12, 1993 memorandum from the Department of State that indicates that Ethiopian citizens who worked in Ethiopian embassies abroad have not faced persecution or prosecution in Ethiopia simply because they were employees of the Mengistu government. That same memorandum also noted that what was then the Transitional Government of Ethiopia had announced that it would prosecute employees of the Mengistu regime who had committed crimes and that 2,000-3,000 former members of the Mengistu regime or members of the Workers' Party of Ethiopia were in detention. The district director relied on this memorandum in concluding that the applicant would not face imprisonment if he returned to Ethiopia.

The Department of State memorandum was, however, written more than eight years prior to the district director's adjudication of the application and, therefore, was not a reliable source of country conditions information at the time of adjudication. Moreover, the memorandum does not address the applicant's specific circumstances. While the Department of State memorandum focuses on whether former diplomats serving the Mengistu government were at risk in Ethiopia in 1993 on the basis of their diplomatic service, the basis for the applicant's fears regarding a return to Ethiopia, as expressed in the sworn statement he provided at his adjustment interview, extend beyond his diplomatic service, focusing primarily on his tenure as General Secretary for his Kebele and his Amharic ethnicity. In that the Department of State memorandum was out of date and had little relevance to the applicant's circumstances, the AAO finds the district director to have erred in relying on it in 2001 for his assessment of the applicant's risk upon return to Ethiopia.

The AAO finds the applicant, by a preponderance of evidence, to have established that, at the time of the district director's decision, he had compelling reasons why he could not return to Ethiopia. The applicant served in an administrative post in his Kebele, the neighborhood watch committee that was the lowest level of local government during the Mengistu regime and that also served as a security surveillance unit for the government. In 2001, the Special Prosecutor's Office, established by the Ethiopian government in 1992, was continuing its prosecution of Mengistu-era officials, including low level officials. *See Response to Information Request, Resource Information Center, Citizenship and Immigration Services*, dated July 30, 2004. By that time, charges had been brought against 5,198 individuals accused of committing crimes, more than half of which were charged in absentia. Those in detention had been held for seven to eight years. *See Ethiopia, Country Reports on Human Rights Practices – 2001*, published March 4, 2002. Moreover, country conditions reporting indicates that in 2001 while the scale of repression against the Amhara people, the applicant's ethnic affiliation, and the AAPO had diminished, the targeting of Amharas, and particularly members and supporters of the AAPO, was continuing. *See Response to Information Request, Resource Information Center, Citizenship and Immigration Services*, dated September 22, 2004. Accordingly, the applicant's previous official position within the Mengistu governing structure, and his Amharic ethnicity and active membership in an Amharic political organization whose members,

in 2001, continued to be subjected to repression by their government, support the applicant's claim that he would have been targeted by the Ethiopian government if he returned to Ethiopia. Although counsel, on appeal, also asserts that the applicant has submitted documentary evidence to demonstrate that he could not obtain proper medical treatment for his medical condition in Ethiopia, the record offers no documentary proof of the health problems affecting the applicant or the unavailability of appropriate treatment in Ethiopia.

With regard to the second prong of section 13(b) of the 1957 Act – the adjustment of the alien would serve the national interest – the AAO finds that the record fails to establish that the applicant's adjustment in 2001 would have been in U.S. interests. On appeal, counsel asserts that the applicant's adjustment is in the national interest "in order to avoid his certain persecution in Ethiopia, for humanitarian reasons due to his severe spinal cord disease, and for the unity of the family." He contends that as the applicant's return to Ethiopia and certain arrest would further highlight the dismal human rights record of the current Ethiopian government, and thus put the United States in "an awkward position," his adjustment would benefit the United States. Counsel's reasoning is not, however, persuasive. Although the AAO notes counsel's claims regarding the positive results of the applicant's adjustment, it does not find them, individually or cumulatively, to constitute the type of benefit to U.S. interests envisaged by section 13(b) of the 1957 Act. Further, it finds no evidence in the record that would establish another basis for concluding that the applicant's adjustment would have served the U.S. national interest at the time of the director's decision. Accordingly, the applicant is not eligible for adjustment under section 13 of the 1957 Act.

The AAO also notes that section 13(b) of the 1957 Act requires an applicant to be "admissible for permanent residence under the Immigration and Nationality Act." Although the district director did not discuss this issue in his decision, the applicant's 1978 membership in his Kebele raises questions about whether he is admissible to the United States under section 212(a)(3)(E)(iii) of the Act, which renders inadmissible aliens who, outside the United States, have committed, ordered, incited, assisted or otherwise participated in the commission of any extrajudicial killing, as defined in § 28 U.S.C. 1350, under color of law of any foreign national. Country conditions reporting indicates that during Ethiopia's "Red Terror," which was officially unleashed when Mengistu took power in 1977, thousands of young men and women suspected of being counter-revolutionaries were found dead in the streets of [REDACTED] and elsewhere, eliminated mainly by militias attached to the Kebeles. Prior to these executions, Kebele members would meet to discuss how to eliminate individual suspects, with each signing documentation to confirm the decisions reached. See "Mengistu Hail Mariam," Press Release, Human Rights Watch, November 24, 1999. The applicant's position as an Kebele official in 1978 would appear to have involved him in these decisions.

For the reasons already discussed, the AAO finds that although the record establishes that the applicant had compelling concerns that precluded his return to Ethiopia at the time the district director adjudicated his adjustment application, it does not demonstrate that his adjustment would have benefited U.S. national interests. Accordingly, the appeal will be dismissed.

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 failed to meet that burden.

ORDER: The appeal is dismissed.