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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:

SEP 10 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 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 sustained.

The applicant is a native and citizen of Panama who is seeking to adjust his status to that of lawful permanent resident under section 13 of the Immigration and Nationality 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 Immigration and Nationality Act.

The district director denied the application for adjustment of status after determining that the applicant had failed to demonstrate any compelling reasons he was unable to return to Panama or that his adjustment would serve U.S. interests. *District Director's Decision*, dated November 19, 1999.

On appeal, counsel contends that the district director erroneously concluded that the evidence provided by the applicant did not establish that he and his family would be at risk if he returned to Panama. He further asserts that the applicant's adjustment would be in the U.S. national interest as, in the decade since he submitted his adjustment application, he has become a "bridge" between the United States and Panama, as well as other Latin American countries. Counsel also maintains that the failure of the legacy Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) to process the applicant's application for ten years constitutes affirmative misconduct and that CIS should be estopped from denying his application. *Form I-290B, Notice of Appeal to the Administrative Appeals Unit*, dated December 21, 1999.

In light of the years that have elapsed between the applicant's filing of the appeal and its 2007 transfer to the AAO, the applicant was offered the opportunity to provide evidence to supplement the record. The applicant's response, submitted on August 3, 2007, has been considered in its entirety in reaching a decision on the present case.

The AAO first turns to counsel's contention that CIS should be estopped from denying the present application based on what he characterizes as the agency's affirmative misconduct in adjudicating the present application ten years after its filing. While the AAO acknowledges the delay in the adjudication of the applicant's adjustment application, it, like the Board of Immigration Appeals, is without the authority to apply the doctrine of equitable estoppel so as to preclude a component part of CIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. The jurisdiction of the Administrative Appeals Office is limited to that authority specifically granted to it by the Secretary of the Department of Homeland Security. *See DHS Delegation Number 0150.1* (effective March 1, 2003); *see also* 8 C.F.R. § 2.1(2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the applicant's equitable estoppel claim and will consider the applicant's case on its merits.

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.

A review of the record establishes the applicant's eligibility for consideration under section 13 of the 1957 Act. He entered the United States on December 8, 1987 as the ambassador and principal diplomatic representative of Panama in the United States and served as Panama's ambassador to the United States until August 31, 1989 when his term expired. *Letter from [REDACTED] Deputy Assistant Secretary for Inter-American Affairs, Department of State, dated November 8, 1989.* Therefore, per 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 November 22, 1989.

The issues before the AAO in the present case are, therefore, whether the record establishes that the applicant has compelling reasons that precluded his return to Panama and that his adjustment would serve U.S. national interests – requirements set forth in section 13(b) of the 1957 Act. At the time of filing, the applicant submitted an August 28, 1989 letter outlining his public opposition as ambassador of Panama to the regime of Manuel Noriega following the February 1988 ouster of then President Eric Arturo Delvalle. The applicant indicated that because of his anti-Noriega stance, his property and assets in Panama were seized and that he also faced a prison term for being a traitor to his country. While the applicant submitted no primary evidence in support of his claims, the AAO notes that the letter from then Deputy Assistant Secretary of State Kozak just noted endorses the applicant's statements and reiterates that the applicant's return to Panama would jeopardize his liberty and life. On May 27, 1992, the Department of State formally certified that it had no objection to the adjustment of the applicant to lawful permanent resident status.

In May 1991, responding to a May 15, 1991 request from then legacy Immigration and Naturalization Service (INS) Commissioner Gene McNary, the applicant submitted a second application for adjustment as a result of INS' inability to locate that filed in November 1989. The application was ultimately adjudicated on November 19, 1999.

In his denial of the application, the district director noted that, while the applicant might have had reasons for being unable to return to Panama when Manuel Noriega was in power, those reasons no longer existed as Panama enjoyed a democratic constitution and an elected government where individual rights and freedoms were respected. In support of the district director's conclusions, the record contains an August 30, 1995 memorandum from the Department of State, which reports that the U.S. invasion of Panama in December 1989 and the removal of Noriega from power removed the threat to the applicant. The memorandum further notes that the applicant is from a prominent Panamanian family and has traveled to and maintained contacts in Panama.

The AAO acknowledges the change in country conditions in Panama noted by the State Department in its 1995 memorandum regarding the applicant, but does not find the memorandum sufficient to establish that the applicant was no longer at risk in Panama in 1999. By the time of the district director's decision, the conditions information provided by the Department of State was four years out of date. Moreover, the memorandum's statements regarding the prominence of the applicant's family in Panama and his travel to Panama are not reliable indicators of the level of risk that his relocation to Panama would create. The AAO also notes that the State Department's assessment of the risk to the applicant in Panama preceded the publication of his 1999 memoir, "In Defiance, The Battle Against General Noriega Fought from Panama's Embassy in Washington," which recounts the applicant's role in the efforts of the Delvalle government to remove Noreiga from power, as well as the activities of the applicant's Panamanian adversaries. The applicant asserts that his 1999 memoir was controversial in Panama and again raised his profile among Noriega's former supporters, placing him at risk. He also contends that some of the individuals he criticized in his book have, in 2007, returned to positions of authority within Panama.

Based on information provided by the applicant's memoir and that offered by independent reporting in the record, the applicant had a highly visible role in a range of efforts that sought to remove Manuel Noriega from power. In light of the information provided in the applicant's 1999 memoir, in which he details his activities to oust Noriega, and identifies and criticizes Noriega allies and supporters, the AAO finds that the applicant's concerns about relocating to Panama in 1999 were realistic. The AAO also acknowledges the applicant's continuing concerns about relocation to Panama in 2007, where a number of Noriega's former supporters hold positions of authority and the imminent transfer of Manuel Noriega to French authorities for prosecution is again creating strong emotions among his former supporters. Accordingly, the AAO finds the record to contain sufficient proof to demonstrate that compelling reasons prevented the applicant's return to Panama in 1999 and thereafter.

With regard to the second prong of section 13(b) of the 1957 Act, which requires the adjustment of the alien to serve the national interest, the AAO finds the record to establish that the applicant's adjustment would have been in the U.S. national interest in 1999 and continues to be so. As the president of the U.S.-Panama Business Council, USA, the record demonstrates that the applicant, in 1989, initiated efforts to strengthen the relationship between the United States and Panama, and that these activities have continued to the present time. Further, the applicant is one of the founders of the Greater America Business Coalition, which promotes understanding and business ties between the United States and the other countries of the Western Hemisphere. The applicant has also submitted evidence of his involvement in the organization of high-level U.S. government trade missions, his

efforts to support continuing U.S. involvement in issues related to the Panama Canal Zone and his organization of conferences and meetings between U.S. and Panamanian officials on security initiatives. Accordingly, the applicant has demonstrated that the U.S. national interest would be served by his adjustment to lawful permanent resident status under section 13 of the 1957 Act.

For the reasons just discussed, the AAO finds the applicant to have established that there are compelling reasons preventing his return to Panama and that his adjustment will benefit the U.S. national interest. Accordingly, the appeal will be sustained.

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 met that burden.

ORDER: The appeal is sustained.