



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

A3



FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: JAN 08 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

ON BEHALF OF APPLICANT:



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 dismissed.

The applicant is a native and citizen of Venezuela 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 modified, 95 Stat. 1611, 8 U.S.C. § 1255b, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(A)(i).

The district director denied the application for adjustment of status because the applicant was maintaining status under section 101(a)(15)(A)(ii) of the Act as the immediate family member of an employee at the Venezuelan Embassy. *Decision of District Director* dated March 27, 2001. The district director also determined that the applicant had failed to demonstrate that compelling reasons prevented his return to Venezuela or that his adjustment would serve the national interest. *Id.*

The applicant's wife [REDACTED] and child ([REDACTED]) each submitted an Application for Status as Permanent Resident (Form I-485) seeking to adjust status under Section 13. The district director issued separate decisions denying these applications. In the Form I-290B Notice of Appeal filed on behalf of the applicant, counsel indicates that he is also appealing those decisions. However, there is no evidence in the record showing that a Form I-290B, with accompanying fee, has been filed on behalf of either the applicant's wife or his child as required. Consequently, the only matter before the AAO is the denial of the applicant's application to adjust status.

On appeal, counsel contends that the applicant submitted a prima facie case of eligibility for adjustment under section 13, demonstrating that he had compelling reasons for being granted adjustment and that such adjustment was in the national interest. *Form I-290B, part 3.*

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.

8 U.S.C. § 1255(b).

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).

A review of the record demonstrates that the applicant is not eligible for consideration under Section 13. The applicant was initially admitted in A-1 status on February 16, 1995 as a Defense and Naval Attache. On September 11, 1997 he was granted a change of status to A-2 status as the immediate family member of his spouse, a secretary at the Venezuelan Embassy, and was maintaining that status as of March 13, 2001. *Letter from [REDACTED] Chief of Diplomatic Liaison Division, Visa Office, Department of State, dated March 13, 2001.* The evidence shows, therefore, that the applicant was admitted to the United States under 101(a)(15)(A)(ii) of the Act and was maintaining that status at the time of his application for adjustment on March 29, 1998. Consequently, he was not then eligible for adjustment under Section 13.

Because the applicant has not demonstrated his eligibility for adjustment as an alien who has failed to maintain a status under sections 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Act, no discussion of whether the record also establishes that compelling reasons prevent the applicant's return to Venezuela or that his adjustment will serve the national interest is necessary. 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.