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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

A3

[redacted]

FILE: [redacted] Office: WASHINGTON DISTRICT Date: MAR 31 2011

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. and an appeal was subsequently rejected by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted. The appeal will be dismissed and the application remains denied.

The applicant is a native and citizen of Zimbabwe who is seeking to adjust her status to that of a 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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The field office director denied the Form I-485, Application to Register Permanent Residence or Adjust Status, on February 12, 2009. The field office director determined that the applicant had failed to demonstrate that compelling reasons prevent her return to Zimbabwe. The field office director also noted that the Department of State issued its opinion on November 21, 2008 advising that it could not favorably recommend the applicant's adjustment of status to that of a lawful permanent resident. The field office director further observed that the applicant had misrepresented her intentions when re-entering the United States on January 30, 2002 as a G-1 visa holder as her status as a G-1 nonimmigrant had been terminated on January 6, 2002.

Counsel submitted a Form I-290B, Notice of Appeal or Motion, a brief, and documentation date stamped as received 34 days subsequent to the director's decision. Upon review, the AAO rejected the appeal as untimely filed. On motion, counsel submits evidence that the Form I-290B and supporting documentation were timely submitted. Counsel submits additional evidence for review. The AAO reopens the matter to consider all the evidence of record and to render a decision on the merits of the application.

Applicable Law

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.

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 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).

Pertinent Facts and Procedural History

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, United States 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 establishes the applicant's eligibility for consideration under Section 13. The applicant was admitted in G-1 status and served as Third Secretary to the Zimbabwe Mission to the United Nations from on or about November 13, 1996 to 2002. The Form I-566, Inter Agency Record of Request, shows that the petitioner's G-1 employment was expected to end in January 2002. The applicant submits a photocopy of a March 3, 2009 letter signed by [redacted] Col. [retd], [redacted] of Zimbabwe to the United Nations, stating that the applicant was an officer with the Zimbabwe Mission to the United Nations up to the end of March 2002. The applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status on May 24, 2007. Therefore, per the requirements of Section 13, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(G)(i) of the Act but no longer held that status at the time of her application for adjustment on May 24, 2007.

In this matter, the applicant has presented evidence of the dire conditions in Zimbabwe including the continued political violence associated with the Mugabe faction of government. Since the filing of the application and the appeal, the AAO takes administrative notice that after protracted negotiations between the two main political parties in Zimbabwe, the opposition leader to the Mugabe government was sworn in as prime minister, while [redacted] continued in his role as president. This development did not alleviate the continuous political turmoil in the country and political instability, as the [redacted] political party continues to try to regain its former power. The AAO takes notice of the dire economic conditions as well as the continued civil unrest regarding the changes in the political landscape.

Regarding the applicant's specific situation, the applicant initially provided an August 28, 2007 personal statement, in which she set out her reasons for not returning to Zimbabwe. The applicant stated: "[t]he reason that my family and I cannot return to Zimbabwe is that the country condition in Zimbabwe has deteriorated particularly in regard to human rights." The applicant in her sworn statement to a USCIS district adjudications officer on November 20, 2007, declared: "we are not politically involved we can go back home anytime from now we don't have any [threats] like that." In response to her attorney's question asking if she feared that her life would be threatened if she was compelled to return to Zimbabwe, the applicant replied: "No, I don't have anything to do with politics like I said I want to remain here to further my education. I didn't mention anything about politics I can go back anytime." The applicant added that she wished that she could return to vote if elections were held.

In a March 12, 2009 statement submitted on appeal, the applicant indicated that she had misunderstood the questions at her November 20, 2007 interview and stated:

> Although I am not politically involved in Zimbabwe and may not be persecuted upon return as a political activist. In fact, I frequently spoke out against the human right abuses in Zimbabwe while I was employed by the [redacted] to the UN. [redacted] was aware of my views and I am sure it will have an adverse impact upon my return to Zimbabwe.

On motion, counsel includes an April 9, 2010 letter signed by [redacted]. [redacted] indicates that she knows the applicant and stayed at her house on one occasion. [redacted] further notes that "in or about and after January 2002,"[1] word leaked out that she was staying with the applicant and her husband and they were labeled members of the opposition party. [redacted] indicates she was questioned about "this" when she returned to Zimbabwe. [redacted] states her belief that the applicant and her family would be in danger if they returned to Zimbabwe because they have been labeled traitors.

[1] As the record reveals that the applicant returned to the United States on January 30, 2002, it is unclear when Ms. Dongo would have stayed with the applicant prior to January 2002.

Compelling Reasons

The AAO agrees that the Mugabe regime has been condemned internationally for its abuse of human rights and violence directed at oppositional factions. The applicant, however, has not provided substantive evidence that she would be targeted as an advocate for human rights. The AAO observes that the applicant did not believe that she would be persecuted for any political beliefs as evidenced in her statements made under oath in 2007. This statement was made subsequent to the 2002 period, the time [redacted] indicated she had been questioned about the applicant and thought that the applicant had been labeled a traitor. There is no probative evidence in the record that the applicant made public statements against any form of the Zimbabwean government, that she was labeled a traitor, or that she would now be targeted for any political statements. The AAO is aware of the current country conditions in Zimbabwe but finds that the applicant has not provided probative evidence demonstrating that she would be a target of or would be at greater risk of harm because of her specific past government employment, political activities or other related reasons. 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)). The record is insufficient to establish that the applicant in her role as a returning diplomat would be at greater risk of harm because of her past government employment, political activities or other related reason.

As referenced above, the legislative history of Section 13 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.

The "compelling reasons" standard is not a merely subjective standard. 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. In this matter, the applicant initially expressed her desire to remain in the United States to pursue her education and because of the deteriorating conditions in Zimbabwe in regard to human rights. She noted that she would be able to return to Zimbabwe because she was not politically active. On appeal she amended her statement to include her belief that because [redacted] was aware of her views on human rights, there would be an adverse impact upon her return to Zimbabwe. Again, however, the record includes no credible information that the petitioner's views on human rights were known to the Mugabe government or that the Mugabe faction will target her for those views upon her return. More importantly, the applicant's credibility is undermined by her inconsistent statements regarding her alleged political activities. In her 2007 interview, she did not express a fear of harm based upon any political opinion she may have expressed and stated that neither she

nor her family had been threatened. In contrast, her 2009 statement submitted on appeal indicates that she frequently spoke out against the government when employed at [redacted] The applicant has failed to explain these inconsistencies.

In this matter, the applicant has expressed her desire to remain in the United States but has not demonstrated that she is unable to return to Zimbabwe 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 acknowledges the hardships associated with relocating to Zimbabwe at this time. It is also noted, however, that the State Department has objected to the applicant being granted adjustment of status and indicated that it does not believe that compelling reasons prevent the applicant's return to Zimbabwe. *See* Interagency Record of Request (Form I-566). The AAO therefore concludes that the applicant has failed to meet her burden of proof in demonstrating that there are compelling reasons that prevent her return to Zimbabwe. As the applicant has failed to demonstrate that there are compelling reasons preventing her return to Zimbabwe, the question of whether adjustment of status would be in the national interest need not be addressed.

Regarding the date that the applicant's employment with [redacted] terminated, the record contains a photocopy of a letter from the [redacted] indicating that the applicant's G-1 status did not expire until March 2002, a date subsequent to the applicant's last entry into the United States in G-1 status. Other than this letter, which is not in its original form, and the applicant's assertion, the record does not contain evidence sufficient to overcome the Department of State's finding that the applicant's G-1 status terminated on January 6, 2002.

Conclusion

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under section 13. She has failed to establish that there are compelling reasons preventing her return to Zimbabwe pursuant to 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 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.