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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: NOV 2 0 2013 Office: NATIONAL BENEFITS CENTER

IN RE:

APPLICATION: Application for Status as a Permanent Resident Pursuant to Section 13 of the Immigration and Nationality Act of 1957, Pub. L. No. 85-316, 71 Stat. 642, as amended.

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron M. Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, National Benefits Center (director). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking to adjust his 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)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

The director denied the Form I-485, Application to Register Permanent Residence or Adjust Status after determining that the applicant had failed to demonstrate that compelling reasons prevent his return to El Salvador. The director also noted that the U.S. Department of State issued its opinion on February 2, 2013, recommending that the application be denied because the applicant did not provide compelling reasons that prevent his return to his country. *Decision of the Director,* dated February 20, 2013.

The director also denied the application of the applicant's dependents who each submitted an Application to Register Permanent Resident or Adjust Status (Form I-485), seeking to adjust status under Section 13 as derivative dependents of the applicant. The director issued separate decisions denying these applications. The dependents did not file a Form I-290B, Notice of Appeal or Motion, appealing the decision of the director. The AAO will only issue a decision to the principal applicant in this case.[1]

On appeal, the applicant submits an additional statement asserting reasons, which he considers compelling, as to why he cannot return to El Salvador.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.[2]

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.

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[1] For each adverse decision, an applicant must submit a separate Form I-290B and associated fee. *See* 8 C.F.R. § 103.3(a)(1).

[2] The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

> (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.

A review of the record establishes the applicant's eligibility for consideration under section 13 of the 1957 Act. The applicant was admitted to the United States on June 1, 2006, in an A-1 nonimmigrant status and thereafter served as [redacted] at the Consulate General of El Salvador in Houston, Texas. The applicant performed duties that were supportive of the Consulate General's diplomatic mission until July 1, 2011 when his status was terminated by the U.S. Department of State. Accordingly, 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 he filed his application for adjustment on July 11, 2011.

The issues before the AAO in the present case are, therefore, whether the record establishes that the applicant has compelling reasons that preclude his return to Pakistan and that his adjustment of status would serve U.S. national interests – requirements set forth in section 13(b) of the 1957 Act.

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, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

Upon a *de novo* review of the record, the AAO concurs with the director's determination that the applicant failed to establish compelling reasons that prevent his return to El Salvador. 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.

According to the American Heritage Dictionary, Fourth Edition, the plain meaning of the term "unable" is "lacking the necessary power, authority, or means." Thus, the "compelling reasons" standard is not a merely subjective standard. Aliens seeking adjustment of status under Section 13 generally assert the subjective belief that their reasons for remaining in the United States are compelling, or that it is interesting or attractive to them to remain in the United States rather than return to their respective countries. What Section 13 requires, however, 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. Even where the meaning of a statutory provision appears to be clear from the plain language of the statute, it is appropriate to look to the legislative history to determine "whether there is 'clearly expressed legislative intention' contrary to that language, which would require [questioning] the strong presumption that Congress expresses its intent through the language it chooses." *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 433, fn. 12 (1987). The legislative history supports the plain meaning of the language in Section 13 that those eligible for adjustment of status under Section 13 are those diplomats that have been, in essence, rendered stateless or homeless by political upheaval, hostilities, etc., and are thus *unable* to return to and live in their respective countries.

At his adjustment of status interview before an immigration officer on November 16, 2011, the applicant executed a Sworn Statement. In that statement, the applicant indicated the following as compelling reasons that prevent his return to El Salvador:

> "In the last 5 years I have worked here in Houston, I have interviewed between 12-15,000 persons, and some of those people I was responsible for deporting them. I am in fear of returning home to El Salvador because some of the people that I deported may recognize me."

On appeal, the applicant submits an undated statement in support of the appeal. In that statement, the applicant asserts that it was his responsibility to interview convicted criminals to determine their nationality and the danger their return could represent to Salvadoran national security. The applicant states that he interviewed thousands of convicted criminals including members of the gangs and issued documents that were used in their deportation to El Salvador. The applicant also states that the interviews took place at the detention center in , that the individuals he

interviewed recognized him by name and position because he had to introduce himself; and that some of the individuals threatened to harm him if he ever returned to El Salvador. The applicant claims that his fear of harm was confirmed sometime in 2011, when he traveled to El Salvador to attend a meeting convened by the foreign affairs office. The applicant also claims that he received a threatening note from a former interviewee for his role in helping the United States government to deport him. The applicant further claims that he reported the incident to his superior and that nothing happened. Rather, his superior told him that the government will not have him attend meetings in El Salvador in order not to expose him to "that type of danger."

The applicant also states that his position at the consulate was terminated by the current government of El Salvador because "they needed someone closer to their political ideas" and that recalling him back to El Salvador was a punishment for helping the United States deport many Salvadoran citizens. The applicant indicates that he fears returning to El Salvador because the government of El Salvador will not protect him and his family. The applicant however, does not submit any independent and objective evidence in support of his assertions.

The AAO has reviewed the applicant's statements, and the country condition information on El Salvador. The AAO acknowledges that El Salvador is a country that is marred by gang violence, kidnapping for ransom and other insecurity caused in part by the gangs and other criminal elements, and poverty in the country. The AAO also acknowledges the applicant's fear of returning to El Salvador due to the violence and insecurity in the country and his apprehension that he and his family will be targeted as they are returning from the United States after a prolonged absence. However, the record in this matter does not present any specific evidence that the applicant would be targeted due to political changes in the country 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 applicant has not submitted evidence showing that he is at greater risk of harm because of his past government employment, political activities or other related reasons. The applicant does not submit any documentation evidencing the nature and severity of the alleged threatening letter that he received while he was visiting El Salvador in 2011, the author of the alleged letter, and that the letter was directed to him based on his duties as [redacted] of El Salvador in Houston, Texas. Therefore, the applicant's claim that he was threatened in 2011 because of the duties he performed as [redacted] of El Salvador in Houston Texas is not substantiated by the record. The record in this matter does not present any evidence that demonstrates specific threats against the applicant and his family because of his past government employment that shows compellingly that he is unable to return to El Salvador. 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 AAO also acknowledges the applicant's desire to remain in the United States for the education and overall wellbeing of his family. The AAO further acknowledges the difficulties the applicant's children may encounter in adjusting to living in El Salvador after a prolonged period of absence from the country. However, the general inconveniences and hardships associated with relocating to

another country and the desire to remain in the United States so as to provide a better living condition for his family are not compelling reasons under Section 13. The applicant has not provided substantive evidence to establish that he and his family would be at greater risk of harm because of his past government employment. The evidence of record does not show that the applicant and his family are unable to return to El Salvador because of any action or inaction on the part of the government of El Salvador or other political entity there as required under Section 13. It is also noted that the U.S. Department of State has recommended that the applicant's adjustment of status be denied because the applicant has presented no compelling reasons that prevent his return to El Salvador. *See* Interagency Record of Request (Form I-566). Accordingly, the AAO concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to El Salvador. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to El Salvador, the question of whether his adjustment of status would be in the U.S. national interest need not be addressed.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13 as he has failed to establish that there are compelling reasons preventing his return to El Salvador. Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he or 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.