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 26 2014 Office: NATIONAL BENEFITS CENTER FILE:

IN RE: Applicant:

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the National Benefits Center Director and was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The matter is now before the AAO on a motion to reopen and to reconsider. The Motion will be dismissed. The application will remain denied.

The applicant is a native and citizen of Egypt 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)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

The director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that he performed diplomatic or semi-diplomatic duties and that compelling reasons prevent his return to Egypt. *Decision of National Benefits Director,* dated January 27, 2014.[1]

On July 7, 2014, upon a *de novo* review of the evidence of record, we concurred with the determination made by the director that the applicant had failed to demonstrate that he performed diplomatic or semi-diplomatic duties and that compelling reasons prevent his return to Egypt. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The motion to reopen qualifies for consideration under 8 C.F.R. § 103.5(a)(2) because the applicant alleges new facts and provides additional documentation not previously in the record in support of the applicant's assertions that his duties were diplomatic or semi-diplomatic in nature, and that compelling reasons prevent his return to Egypt.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The motion qualifies for consideration under 8 C.F.R. § 103.5(a)(3) because the applicant alleges that the director and the AAO made an erroneous decision through misapplication of law or policy, or provide precedent decisions to support such a claim, in determining that the applicant failed to establish compelling reasons why he cannot return to Egypt.

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[1] The director also denied the applications of the applicant's spouse and his four children. The dependents, however, have not filed a Form I-290B, Notice of Appeal or Motion, from the director's decisions.

As stated in the director's January 27, 2014 denial, and in our dismissal decision, the issues in this proceeding are whether the applicant has established that he performed diplomatic or semi-diplomatic duties, and whether compelling reasons prevent his return to Egypt.

On motion, as on appeal, counsel for the applicant asserts that the director erred in his decision. Counsel submits a brief wherein he contends that compelling reasons prevent the applicant's return to Egypt. In support, counsel submits country condition information on Egypt. It is noted that, on motion, counsel does not address the issue whether the applicant has established that he performed diplomatic or semi-diplomatic duties.[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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> (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-

[2] We note that on motion, counsel misstates the procedural history. Counsel states that in its denial USCIS stated that the applicant failed to "properly establish [the applicant's] diplomatic status;" and, that we based our dismissal decision "upon the [applicant's] failure [to] establish hardship in returning to his home country." As stated above, and in our dismissal, we concurred with the determination made by the director that the applicant had failed to demonstrate that he performed diplomatic or semi-diplomatic duties and that compelling reasons prevent his return to Egypt.

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 are 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.

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 and 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).

We now turn 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).

The first issue to be addressed is whether the record establishes that the applicant performed diplomatic or semi-diplomatic duties.

As discussed above, on motion, the applicant has not addressed the issue whether his duties were of a diplomatic or semi-diplomatic nature. Neither does the applicant submit documentation to establish that his duties were of a diplomatic or semi-diplomatic nature.

In our dismissal decision, upon *de novo* review of the record, including the applicant's sworn statement before a USCIS immigration officer on October 12, 2012, the applicant's assertions and submissions on appeal, we determined that the duties the applicant performed were neither diplomatic nor semi-diplomatic in nature.

In the dismissal of the appeal, we reviewed the record which shows that the applicant was last admitted in A-2 nonimmigrant status on March 28, 2008, and he worked as a teacher of the Arabic language at the Texas, from October 2005 until October 2008. *Letter from* dated November 15, 2005. At the time of his interview before an immigration officer on October 12, 2012, the applicant indicated that his official title was an "Iman-Preacher (Pastor)" and he described his duties as religious, providing proper education on the Muslim faith and Arabic language.

We reiterate, the record does not contain detailed information or any official documentation describing the applicant's actual role and duties at the Islamic Society or whether he ever performed duties that were diplomatic or semi-diplomatic in nature. Simply 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))

On appeal, counsel asserted that the applicant came to the United States as a diplomat of Egypt. Counsel asserted, in pertinent part:

> [The applicant] actively interacted with a large group of persons within the United States in his position as an Imam. He and his family exposed a large number of persons to the Egyptian culture through his teachings at the and through his children's attendance at public schools within that community. He was sent to the United States by the Mubarak government to represent the Egyptian government and to serve the Egyptian government in a religious capacity.

Although the term "diplomatic" is used in the Act to describe aliens admitted to the United States under section 101(a)(15)(A) of the Act, the language and intent of 8 C.F.R. § 245.3 is to exclude from consideration for adjustment of status under section 13 of the Act certain aliens admitted in "diplomatic" status and entitled to the rights and immunities afforded diplomats under international law. Both section 101(a)(15)(A) of the Act and the Vienna Convention recognize that certain accredited employees or officials admitted to serve within embassies or other diplomatic missions are not "diplomatic" staff. The Vienna Convention refers to such personnel as administrative and technical staff, service staff, or personal servants. *The Vienna Convention on Diplomatic Relations,* Art. 1 (April 18, 1961), 500 U.N.T.S. 95. Whereas ambassadors, public ministers, and career diplomatic or consular officers are admitted under section 101(a)(15)(A)(i) of the Act, those admitted under section 101(a)(15)(A)(ii) of the Act such as the applicant are described as "other officials and employees" accepted on the basis of reciprocity. These non-diplomatic employees are nevertheless afforded the rights and immunities of diplomatic staff. *See Vienna Convention, supra,* Art. 37.

The essential role of a diplomat is the representation of a country in its relations with other countries. *See American Heritage Dictionary of the English Language, 4th Edition, 2000* (Diplomat: One, such as an ambassador, who has been appointed to represent a government in its relations with other governments); *Black's Law Dictionary* (Diplomacy: The art and practice of conducting negotiations between national governments). Although the applicant was issued an A-2 visa in order to enter the United States, and worked as a teacher at the Islamic Society in Denton, Texas, he was never accredited by a foreign government or recognized by the United States Department of State as a diplomat representing any foreign government. *Interagency Record of Request (Form I-566)* dated December 20, 2013.[3]

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[3] The United States Department of State issued its opinion on December 20, 2013, recommending that the applicant's application for adjustment of status to that of a lawful permanent resident be denied, in part, because the applicant never registered with the Office of Protocol.

The AAO acknowledges that the inclusion of the term semi-diplomatic in 8 C.F.R. § 245.3 indicates that those accredited aliens not engaged in diplomatic duties, but who perform duties in direct support and furtherance of such activities, may also be considered for adjustment of status under section 13 of the Act. We determined that the record failed to demonstrate that the applicant was entrusted with duties of a diplomatic or semi-diplomatic nature. Therefore, we affirmed the director's decision to deny the application for adjustment of status on this ground; and, we find no reason to modify our decision. For this reason the application must be denied.

The second issue to be addressed is whether the applicant has established that compelling reasons prevent his return to Egypt.

As on appeal, on motion counsel asserts that because the applicant and his family have spent many years in the United States it will make them large targets for violence and/or kidnapping; that the applicant and his family may be viewed as too westernized by parts of the society and by "Mubarak supporters"; that one or more of the applicant's daughters may become the target of a sexual assault; that the applicant's youngest daughter is a U.S. citizen who has never been to Egypt and will be susceptible to violence due to her gender and citizenship; that the applicant and his family will face general inconveniences and hardships associated with relocating to another country; and, that regardless of the applicant's political opinion, the present regime in Egypt will view the applicant and his family as a reminder of the ousted Mubarak government. Counsel submits news articles pertaining to violence against women in Egypt.

We noted in our dismissal that the record reflects that when asked what compelling reason prevents his return to Egypt, the applicant, in his sworn statement before a USCIS immigration officer on October 12, 2012, stated that he feared for his and his family's lives due to the change in government, and that he was a religious leader of the mosque representing the democratic party of the previous president of Egypt, Hosni Mubarak. We also noted that the U.S. Department of State has recommended that the applicant's adjustment of status be denied, in part, because the applicant has presented no compelling reasons that prevent his and his family's return to Egypt. *Interagency Record of Request (Form I-566)* dated December 20, 2013.

We acknowledge the evidence showing the existence of political violence and of discrimination and violence against women in Egypt. However, there is no evidence in the record to establish that the government of Egypt will not allow the applicant to return to the country or that political conditions in Egypt render the applicant essentially "stateless or homeless" as required for adjustment of status under section 13 of the Act.

As set forth in the dismissal decision, 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). Contrary, to the applicant's contention, as stated in our dismissal decision, 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. Desiring to establish a life in the United States is not a compelling reason under Section 13. Similarly, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under section 13 of the Act. The documentation provided does not present compelling reasons that prevent the applicant from returning to Egypt. The applicant has failed to meet his burden of proof in this regard.

As the applicant has not established that he performed diplomatic or semi-diplomatic duties, and that there are compelling reasons that prevent his return to Egypt, the question of whether adjustment of status would be in the national interest need not be addressed.

For the reasons discussed above, we find that the applicant is not eligible for adjustment under Section 13. He has failed to establish that his duties were diplomatic or semi-diplomatic in nature, and that compelling reasons prevent his return to Egypt. 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.

ORDER: The motion is dismissed. The application remains denied.