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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: NOV 2 6 2014 Office: NATIONAL BENEFITS CENTER File:

IN RE: Applicant:

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 PETITIONER:

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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will remain denied.

The applicant is a native and citizen of Mexico, 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 amended, 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 establish compelling reasons that prevent his return to Mexico. The director also noted that the U.S. Department of State has recommended that the applicant's adjustment application be denied because the applicant presented no compelling reasons why he cannot return to Mexico. *Decision of the Director,* dated June 17, 2014.

On appeal, counsel asserts that the director made an erroneous conclusion of law and facts in determining that the applicant failed to establish compelling reasons that prevent his return to Mexico. Counsel submits a letter, an affidavit from the applicant, supporting letters and statements from witnesses on behalf of the applicant and country condition information on Mexico in support of the appeal. Counsel requests that the appeal be granted and that the applicant be approved for adjustment of status in the United States.

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.[1]

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.
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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

[1]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).

> 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.

In addition, an applicant for adjustment of status under Section 13 must not be maintaining diplomatic status in order to apply for adjustment under Section 13; thus, his or her status must be terminated prior to the date on which the adjustment application is filed. Pursuant to 8 C.F.R.§ 214.2(a), an alien admitted under section 101(a)(15)(A)(ii) or 101(a)(15)(G)(i) or (ii) of the Act maintains that status "for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status." Thus, the authority to determine the date of termination of status under section 101(a)(15)(A)(i) of the Act rests exclusively with the State Department. An application for adjustment of status under Section 13 filed while the applicant is maintaining diplomatic or semi-diplomatic status is properly denied. However, denial of the application on this ground does not preclude the applicant from filing a new application once the requirement for applying – failure to maintain status – has been met.

In this case, a review of the evidence of record demonstrates that the applicant is not eligible for consideration for adjustment of status under Section 13 of the Act because he has presented no credible and probative evidence to establish that his A-2 status had been terminated by the U.S. Department of State prior to filing the adjustment of status application.

The record in this case reflects that the applicant was admitted in an A-2 nonimmigrant status and thereafter worked for the California as a contractor from September until May and thereafter for the of the , California, from June until February [3]

At his adjustment of status interview on March 5, 2013, the applicant stated under oath that he last entered the United States on October 12, 2012 with an A-2 non-immigrant visa, to continue his

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[2] See statement from dated March 18, 2013.

[3] See statement from , California, dated October 29, 2013.

work at the [redacted] until February 28, [redacted] when his contract with that office terminated. In an undated statement submitted by the applicant in support of the appeal, the applicant stated that he began working for the [redacted] in September 2000, that he was posted in [redacted], California and that he came to the United States with an A-2 visa, and that he maintained the A-2 status until December [redacted]. On appeal, counsel asserts that the applicant entered the United States in 2000 on an A-2 visa and maintained his A-2 status until December 2013. While the record shows that the applicant was admitted into the United States with an A-2 non-immigrant visa, there is no evidence in the record to establish that the applicant was accredited by the U.S. Department of State as a member of the Mexican diplomatic corps in the United States with full diplomatic immunities and privileges, or that the applicant's A-2 status was terminated by the U.S. Department of State and when the status was terminated. The record shows that the applicant was in valid A-2 nonimmigrant status until at least February 2013, when his contract with the [redacted] was terminated. The applicant filed the Form I-485 application on December 24, 2012. Therefore, it appears from the record that the applicant was still in A-2 non-immigrant status at the time he filed his application on December 24, 2012. Therefore, pursuant to the requirements under Section 13 of the Act, the applicant was not eligible to apply for adjustment of status on December 24, 2012. The applicant has provided no evidence to rebut or overcome the director's finding or to establish that his A-2 status had been terminated by the U.S. Department of State prior to December 24, 2012, the date he filed the adjustment application.

Based on the evidence of record, the applicant was admitted to the United States in an A-2 non-immigrant status under section 101(a)(15)(A)(ii) of the Act, was maintaining that status at the time he filed his application for adjustment on December 24, 2012, and therefore was not eligible to apply for adjustment under Section 13 at the time of the filing. As the applicant was not eligible to apply for adjustment of status under section 13 of the Act, the issues of whether the applicant performed diplomatic or semi-diplomatic duties, has established compelling reasons that prevent his return to Mexico and whether his adjustment is in the national interest of the United States will not be addressed.

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. The application remains denied.