

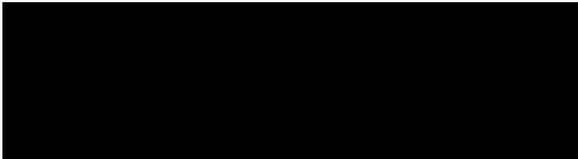
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
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Services



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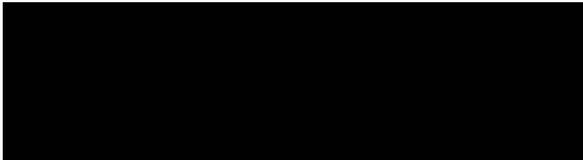
FILE: [Redacted] Office: WASHINGTON DISTRICT

Date: **MAR 24 2009**

IN RE: [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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office 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 her 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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The field office director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that she performed diplomatic or semi-diplomatic duties for the Permanent Mission of Venezuela to the United Nations and that she failed to present compelling reasons that prevent her return to Venezuela. The field office director also noted that the Department of State issued its opinion on July 11, 2008 advising that it could not favorably recommend this case as the applicant's reasons to remain in the United States are not compelling.

On appeal, counsel for the applicant asserts that the field office director erred in her decision. Counsel submits a brief and documentation in support of the appeal.

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.

A review of the record establishes the following. The applicant obtained a G-1 visa on March 26, 2001. The record includes an April 18, 2001 letter from the United States Mission to the United Nations acknowledging the employment of the applicant by the Mission of Venezuela as a receptionist and indicating that as a non-diplomatic member of the staff of the permanent mission, she would enjoy immunities from jurisdiction only with respect to acts performed in the course of official duties. The record also contains a February 1, 2003 letter signed by [REDACTED] Charge d'Affaires, a.i. indicating that the applicant was employed at the Permanent Mission of Venezuela to the United Nations from November 15, 2000 to March 31, 2002. The record shows that the applicant served in the Permanent Mission of Venezuela to the United Nations until March 31, 2002. Accordingly, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States under section 101(a)(15)(G)(i) of the Act but no longer held that status at the time she filed her application for adjustment on April 28, 2003.

The issues before the AAO in the present matter are whether the record establishes that the applicant performed diplomatic or semi-diplomatic duties while employed at the Venezuelan Permanent Mission to the United Nations and has compelling reasons that preclude her return to Venezuela – 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).

Although the record shows that the applicant obtained classification under section 101(a)(15)(G)(i) of the Act, the field office director determined that the applicant did not perform duties of a diplomatic or semi-diplomatic nature, but rather of a clerical nature. The AAO concurs in this determination. The AAO acknowledges that the terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations and that the standard definitions of terms such as diplomat, diplomatic and diplomacy are varied and broad, and that, in practice, diplomacy may encompass many responsibilities and duties. However, 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). 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. These "non-diplomatic" employees are nevertheless afforded the rights and immunities of diplomatic staff. *See Vienna*

Convention, supra, Art. 37. In the matter of non-diplomatic employees who are admitted pursuant to section 101(a)(15)(G)(i) of the Act, USCIS must evaluate the position held and its attendant duties to determine whether the applicant is eligible under Section 13. To establish eligibility for Section 13 the applicant must perform some diplomatic or semi-diplomatic duties, not duties that only relate to clerical, administrative, custodial, or technical support of the Consulate or Mission.

In the applicant's December 14, 2006 interview before a USCIS immigration officer, the applicant declared her official title at the Permanent Mission of Venezuela was Director of Protocol and that her duties included: assisting "the ambassador and all the diplomats who needed to do any meetings or receptions, or needed to organize any meetings outside the mission and inside the mission and also in the residents of the ambassadors." The record also includes a recommendation letter written by [REDACTED], Deputy Permanent Representative on May 14, 2003 on behalf of the applicant. [REDACTED] indicated that the applicant had worked at the Mission for the last two years as a Director of Protocol and that:

Her good command in the English language has proved to be of great help in our work, when she has conducted bilingual meetings between Venezuelan Mission to the United Nations and the UN Secretariat offices. She has also acted as liaison officer between the Protocol office of the President of Venezuela and the Permanent Mission of Venezuela to the United Nations in the various visits the President has made to the United Nations in the last years, since he has been in office.

The record also includes a May 27, 2005 letter written by [REDACTED], the applicant's colleague at the Permanent Mission of Venezuela to the United Nations who declared:

Among [the applicant's] duties and responsibilities, she was in charge of classification/distribution of all correspondences, official translation of documents, intake phone calls and provision of information and referral to the general public. In addition, [the applicant] assisted the Executive Secretary of the Ambassador, in Public Relations and planning social events for the Embassy as well as at the Ambassador's Residence, serving as liaison at meetings and other diplomatic gatherings.

On appeal, the applicant adds that she was the International Law Commission campaign assistant to [REDACTED] and reiterates the duties outlined by [REDACTED] in the applicant's recommendation letter. The AAO has reviewed the duties listed by the applicant, her former colleagues [REDACTED] and [REDACTED] and [REDACTED] as well as the April 18, 2001 letter from the United States Mission to the United Nations acknowledging the applicant's employment as a receptionist for the Venezuelan Permanent Mission. The AAO finds that the applicant's filing and distribution duties, receptionist duties of taking phone calls and transferring calls from the general public, and assisting with planning of social events, are clerical or perhaps administrative duties. As such, the applicant was performing non-diplomatic duties; the applicant was not accredited to perform diplomatic or semi-diplomatic tasks. The AAO has considered [REDACTED] general statements in the applicant's recommendation letter prepared for the applicant. The record does not include sufficient information regarding the "bilingual meetings between Venezuelan Mission to the United Nations and the UN

Secretariat office” to determine whether the applicant acted as a translator or actually conducted the meetings. In addition, the applicant’s duties acting as a liaison officer are not adequately defined. It is not possible to determine if the “liaison” duties involved administrative or clerical functions coordinating travel and hotel arrangements or involved diplomatic support duties in representing the Venezuelan government. Similarly, the record does not include evidence of the applicant’s duties as a campaign assistant and whether the duties comprised typing, dictation, or other clerical functions in support of [REDACTED]. These generally described duties, if including more than clerical duties, are inconsistent with the applicant’s designation as a receptionist, her designation presented to the United States. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the applicant equated her claimed duties to semi-diplomatic duties, the applicant does not provide information detailing her actual responsibilities in any of the roles she was required to perform and does not explain why her government represented to the United States that she would be performing the duties of a receptionist. 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 does not substantiate that the applicant had any formal advisory or decision-making role at the Mission or that she represented Venezuela before any foreign government in an official capacity. 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. However as noted above, 8 C.F.R. § 245.3 provides that 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 AAO notes that 8 C.F.R. § 245.3 does not provide that duties that are not considered custodial, clerical or menial are necessarily diplomatic or semi-diplomatic duties. The record in this matter is inconsistent regarding the applicant’s designation and is insufficient to establish that the applicant performed semi-diplomatic duties in support of the Permanent Mission of Venezuela rather than clerical and administrative duties. Accordingly, the record in this matter is insufficient to find that the applicant performed diplomatic or semi-diplomatic duties and is eligible for consideration for the benefit under Section 13.

The AAO also concurs with the field office director’s determination that the applicant failed to establish compelling reasons that prevent her return to Venezuela. 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.

In a May 8, 2005 personal statement, the applicant indicated her reasons for being unable to return to Venezuela involved circumstances relating to a private business she had established with a partner in Venezuela and the partner and the partner's boyfriend's dishonesty relating to the business. The applicant stated that her partner's boyfriend threatened her and thus her family advised her to go away for awhile. As such, she entered the United States as a visitor and while visiting learned of a position with the Venezuelan Mission in New York and began working for the Mission. In a May 31, 2005 personal statement, the applicant adds that she was forced to leave her post at the Permanent Mission of Venezuela because of threats and harassment by the head of the Mission because she expressed her disagreement with certain government policies. The applicant declared: "[g]iven our participation in opposition activities, government officials and groups loyal to the President and his political party have subjected my immediate family and other relatives to threats and harassment" and [i]f I return to Venezuela I will be subjected to further harassment, threats and possible death due to my support of and links to the opposition in Venezuela." The record also includes a letter dated May 22, 2005 signed by [REDACTED], a former ambassador of the foreign service of Venezuela who declared that the Venezuelan government required all internal staff of the Missions and Embassies around the world to participate in demonstrations supporting the official government and that people like the applicant who would not participate in such demonstrations lost their civil rights and therefore could not hold a position in the public administration. Mr. [REDACTED] noted his opinion that anyone who demonstrated in opposition to the Venezuelan government would be subject to revenge such as dismissal, threats, and politically motivated lay-offs.

In the applicant's December 14, 2006 interview before a USCIS officer, the applicant declared that the Venezuelan government knows that she used to work for the government and that she is totally against what they are doing so it would be very difficult for her to get a job. The applicant also noted that she

had been threatened by the ambassador serving at the Mission when she served and noted that he sent information to the Venezuelan government indicating that she opposed the government.

On appeal, the applicant submits a third personal statement. The applicant declares that while working at the Permanent Mission, she refused to participate in demonstrations of support for the government and was suspected of having ties with the opposition. The applicant declares further that she was subjected to hostility, threats, and harassment by the Head of the Mission and was dismissed due to her political views. The applicant adds that a former business associate also threatened to harm her and her family because of their political views. The applicant also elaborates on incidents that occurred while she was employed at the Permanent Mission. The applicant notes that in September 2001, she and other staff were ordered to cheer for President Chavez in the streets when he came to visit New York and that when she refused she was labeled an enemy of the government. The applicant indicates that in January 2002, [REDACTED] accused her and her family of conspiring against the government and accused her of working as a spy. On February 28, 2002, the applicant states that she received a memorandum from Ambassador Alcalay dismissing her from her position with no justification. The applicant notes further that in January 2002 she received anonymous threatening phone calls that continued to June 2002. The applicant indicates further that in March 2002 she received a letter that her appeal to be reinstated to her position was refused. The applicant also declares that in August 2004 she signed a petition in support of a presidential recall referendum and has received word that she would not be able to find a job in Venezuela as a result of her signature on the petition.

The applicant also submits an October 3, 2008 letter from [REDACTED] a co-worker at the Venezuelan Mission in New York, wherein [REDACTED] confirms her previous 2005 statement and declares that she witnessed the hostility and arbitrary proceedings against the applicant and that [REDACTED] wrongly accused the applicant of “anti-government confabulations.” The record on appeal also includes an October 15, 2008 letter from [REDACTED] confirming his previous statement and declaring that he witnessed the applicant’s summons to [REDACTED] office in January 2002 when the Ambassador accused the applicant of being a traitor by publicly expressing her disagreement with President Chavez. Mr. [REDACTED] notes that the applicant was warned by the Ambassador that she would be harmed if she returned to Venezuela. The record also includes statements from the applicant’s mother, a director and editor of a Venezuelan newspaper, a parish priest in Venezuela, and the applicant’s current employer wherein they note that they have been told of the applicant’s difficulties and believe that Venezuela is not a place for individuals like the applicant who have openly expressed their discontent with the government of Venezuela.

The AAO has reviewed the statements of the applicant’s mother, the director and editor of a Venezuelan newspaper, the parish priest in Venezuela, and the applicant’s current employer. These statements are based on what the applicant related to them regarding her difficulties while employed at the Permanent Mission of Venezuela in New York and their opinions regarding the country conditions in Venezuela. The AAO does not find these statements probative as they are not based on personal knowledge of the incidents the applicant claims occurred while she was employed in New York by the Venezuelan Mission. The AAO has also reviewed the applicant’s mother’s statement as it relates to the applicant’s problems with her business in Venezuela and a threatening phone call the applicant’s mother received from an individual involved in that business. The information provided by both the applicant

and the applicant's mother regarding a private enterprise in Venezuela prior to the applicant's entry into the United States and her employment with the Venezuelan Mission is not relevant when attempting to establish eligibility under Section 13. As noted above, Section 13 requires that the compelling reasons provided by the applicant must 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. In this matter, the private dispute between the applicant and her former business associates does not relate to political changes in Venezuela that occurred while the applicant was employed by the Venezuelan government.

The AAO has also reviewed the statements submitted by the applicant's co-workers and their belief that the applicant's dismissal was politically motivated. The AAO observes, however, that the individuals who submitted statements on the applicant's behalf are general in nature and although indicating that they witnessed hostilities and the applicant being summoned to the Ambassador's office, do not indicate they were in the office when the applicant was allegedly harassed, threatened, or subjected to arbitrary proceedings. The information in the statements does not substantiate that the Ambassador warned the applicant that she would be harmed if she returned to Venezuela because of her political disagreement with the Chavez government and does not indicate that either individual witnessed the applicant being called a spy or traitor.

The AAO has also reviewed the applicant's three personal statements. The applicant's initial statement provided no information regarding the personal animosity between the applicant and the Ambassador and did not reflect that the applicant had any political disagreement with the Chavez government. Instead, the applicant's initial statement referred to her fear of her former business associates. The applicant's second personal statement relates to being removed from her post at the Permanent Mission because of threats and harassment by the Head of the Mission because of her expression of disagreement with certain government policies. The applicant indicated: "[g]iven our participation in opposition activities, government officials and groups loyal to the President and his political party have subjected my immediate family and other relatives to threats and harassment" and [i]f I return to Venezuela I will be subjected to further harassment, threats and possible death due to my support of and links to the opposition in Venezuela." The applicant does not provide substantive evidence that her family in Venezuela were subjected to harassment and threats from government officials because of her or their actions in opposition to the Venezuelan government. 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 has reviewed the May 22, 2005 letter signed by [REDACTED] who notes that the Venezuelan government required internal staff of the Missions and Embassies to participate in demonstrations supporting the official government and who offers his opinion that those individuals who did not participate would not be allowed to hold a position in public administration and would be subject to dismissal, threats, and politically motivated lay-offs. Former [REDACTED] does not provide examples of individuals who have been subjected to such actions by the Venezuelan government. Rather, the opinion and statement proffered are based on speculation and the general conditions of Venezuela not the actual substantive circumstances of the applicant and her family.

The record is deficient in this regard. The AAO recognizes the U.S. State Department's Country Report on Venezuela and acknowledges that the Venezuelan government has been subject to corruption and political influence. However, the AAO also notes that the Venezuelan people called for and obtained a recall referendum for President Chavez and that President Chavez' subsequent receipt of 59 percent of the vote was not due to systemic electoral fraud. In addition, in subsequent elections opposition parties have provided candidates and opposition members have been elected to the National Assembly. Furthermore, the AAO notes that in this matter, the U.S. State Department has also objected to the applicant being granted adjustment of status pursuant to section 13 and indicated that it does not believe that compelling reasons prevent the applicant's return to Venezuela. *See* Interagency Record of Request (Form I-566). Thus, the opinion of Former [REDACTED] conflicts with the U.S. State Department's finding that the applicant does not have compelling reasons to return to Venezuela. When an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The AAO finds that the record is deficient in establishing a specific threat against the applicant or her family or that she would be subject to persecution because of her political disagreement with the Chavez regime.

In addition, the AAO observes that dismissal from a position within a foreign government mission for disagreement with that foreign government's policies is not a compelling reason preventing an alien's return to the country that accredited him or her. Foreign governments necessarily expect that their employees support their policies in accredited positions in foreign posts. The applicant's disagreement with her government's position on participating in demonstrations, while an exercise of a universal freedom, does not require that the Venezuelan government continue to employ her in a foreign mission, if she is not representing that government's policies. The AAO finds that the applicant's dismissal does not substantiate that the applicant will be subject to harassment or life threatening actions or will be unable to find employment when she returns to Venezuela. Hardship in finding work or in re-adapting to one's country is not a compelling reason under Section 13. The evidence of record does not show that the applicant is unable to return because of any action or inaction on the part of the government of Venezuela or other political entity there as required under Section 13. The AAO finds that the applicant has not submitted substantive evidence showing that she is at greater risk of harm because of her past government employment, political activities or other related reason.

Although unnecessary to address as the applicant has failed to demonstrate that there are compelling reasons preventing her return to Venezuela, the AAO briefly notes that the applicant has also failed to demonstrate her adjustment of status is in the national interest. The AAO notes the applicant's volunteer work and her current employment; however, these general and positive attributes do not specifically relate to the national interest of the United States. The applicant has not provided definitive information showing how or why her continued residence in the United States will benefit the U.S. government. The applicant has not established her adjustment of status is in the national interest.

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 she performed diplomatic or semi-diplomatic duties, that there are compelling reasons preventing her return to Venezuela, and that her continued residence in the United States is in the national interest. 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.