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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: **NOV 13 2008**

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:

INSTRUCTIONS:

There 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Lebanon accredited by the United Arab Emirates 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)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

The district director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent her return to Lebanon. *Decision of Field Office Director*, dated October 25, 2007.

AAO withdrew the decision of the field office director, observing that Section 13 requires only that an applicant show that there are "compelling reasons demonstrating . . . that the alien is unable to return to the country represented by the government which accredited the alien." The AAO dismissed the appeal on the ground that the applicant had failed to demonstrate that she performed diplomatic or semi-diplomatic duties as required by 8 C.F.R. § 245.3. *Decision of AAO*, dated June 20, 2008.

In her motion to reconsider, the applicant contends that the AAO erred in relying on dictionary definitions for the term "diplomatic" when Article 3 of the Vienna Convention on Diplomatic Relations and Optional Protocols (Vienna Convention) defines the functions of a diplomatic mission, particularly the function of "ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State." *Motion to Reconsider*, dated July 13, 2008, at 1-2. The applicant asserts that she, as a translator, produced a "daily newsletter and other reports based on the American media and think tank reports" sent to high officials in the Emirates, duties that she claims were diplomatic or semi-diplomatic. *Id.* at 2-3. The applicant states that her duties were clearly not custodial, clerical or menial, and thus must be considered semi-diplomatic or diplomatic. *Id.* at 3. The applicant also observes that the U.S. State Department website states that to qualify for an A visa, the duties to be performed "must be governmental in character and nature." *Id.* The applicant also contends that she was not a contract employee as stated in the decision, but rather a permanent employee. *Id.* She states that is not unusual for the United Arab Emirates to hire Arabs from other Arab countries as permanent and contractual employees in their embassies or other governmental departments. *Id.* The applicant observes that Article 8 of the Vienna Convention allows nationals of a third country to serve as members of the diplomatic staff of a diplomatic mission. *Id.* at 4. The applicant asserts that she has compelling reasons not to go to the United Arab Emirates, and compelling reasons not to go to Lebanon because of the Emiratis, who she contends "have been pursuing [her] for decades now." *Id.* at 4. The applicant also observes that the decision fails to address the issue of whether her adjustment is in the national interest of the United States. *Id.* at 5.

8 C.F.R. § 103.5(a) states in pertinent part:

Motions to reopen or reconsider

....

(2) Requirements for motion to reopen. 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.

....

(3) Requirements for motion to reconsider. A motion to reconsider must 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed

....

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 her 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 Attorney General 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 Attorney General, in her discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

8 U.S.C. § 1255(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 terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. 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 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) such as the applicant are described only 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 AAO acknowledges that the common definitions of terms such as diplomat, diplomatic and diplomacy are varied and broad, and that in practice diplomacy may encompass many responsibilities and duties. Generally, a diplomat represents a country in its relations with other countries or international governing bodies. *See Vienna Convention, supra*, Art. 3; *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, 8th Edition, 2004* (Diplomacy: The art and practice of conducting negotiations between national governments). The applicant contends that the "functions of a diplomatic mission" listed in the Vienna Convention are diplomatic duties for the purposes of Section 13. Article 3 of the Vienna Convention provides, in pertinent part:

1. The functions of a diplomatic mission consist *inter alia* in:
 - (a) representing the sending State in the receiving State;
 - (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
 - (c) negotiating with the Government of the receiving State;
 - (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
 - (e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

Although the AAO recognizes the authority of the Vienna Convention, to which the United States is a signatory, the phrase “diplomatic and semi-diplomatic duties” as used in 8 C.F.R. § 245.3 must also be interpreted consistent with the language and intent of the regulation and Section 13. 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, 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. Nevertheless, it should also be noted that 8 C.F.R. § 245.3 does not provide that any duties not considered custodial, clerical or menial are necessarily diplomatic or semi-diplomatic.

This case presents the unusual situation of an alien accredited by the government of a country in which the applicant is neither a native nor a citizen. The record reflects that the applicant is not a citizen of the United Arab Emirates, the country that accredited her, but is a native and citizen of Lebanon who was hired to work as a translator at the Embassy of the United Arab Emirates in Washington, D.C. The legislative history for Section 13 shows 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). However, as stated in the previous decision, the plain language of Section 13 requires only that an applicant demonstrate that there are “compelling reasons demonstrating . . . that the alien is unable to return to the *country represented by the government which accredited the alien*, rather than to the country or countries in which the applicant holds citizenship (emphasis added).

That the circumstances presented in this case are not specifically addressed in Section 13 or relevant regulations is consistent with the axiom, as stated in the Vienna Convention, that members of the diplomatic staff of a mission “should in principle be of the nationality of the section State.” *Vienna Convention, supra*, Art. 8. This further conforms to the general principle, as stated in Article 3 of the Vienna Convention, that a diplomat serves as a representative of the government that accredits the diplomat, and that a government will not generally entrust representation to non-citizens. Thus, in determining whether a particular duty is to be considered diplomatic or semi-diplomatic, the AAO has considered whether the performance of the duty involves the representative authority of the accrediting government.

The AAO affirms its previous decision that the applicant did not perform semi-diplomatic or diplomatic duties. The Embassy of the United Arab Emirates has reported that the applicant performed the following duties:

Preparation of daily media reports from selected newspapers and magazines published in the United States on articles pertaining to the United Arab Emirates in particular and the Gulf region and the Middle East in general. Dr. [REDACTED] was also in charge of translating various official documents, which includes: political, economic, legal and medical documents from English to Arabic and vice versa.

Letter from the Embassy of United Arab Emirates in Washington D.C., dated June 14, 2000. The applicant has asserted that her duties were diplomatic or semi-diplomatic because in addition to performing the normal duties of a translator, she also wrote daily, weekly and monthly reports summarizing and analyzing the news for

consumption by high government officials at the Embassy and in the United Arab Emirates. *Notarized Statement of Applicant*, dated August 22, 2001. However, the AAO finds that the record shows that the applicant was a non-citizen employee with apparently no representative duties or authority on behalf of the government that accredited her. The record demonstrates that applicant translated and summarized news articles and other media information for general consumption by government officials, a task that required the application of analytical skills, but it does not show that she had any formal advisory or decision-making role at the Embassy, was involved in confidential communications, or represented the United Arab Emirates before the media or in any other capacity. The AAO acknowledges that the applicant may have, to a certain extent, “ascertain[ed] conditions and developments” in the United States by translating and analyzing publicly available news media, but finds that the applicant’s duties in ther regard were not semi-diplomatic or diplomatic. Therefore, the AAO determines that the applicant has failed to demonstrate that, as a non-citizen employee, she was entrusted with duties of a diplomatic or semi-diplomatic nature.

As the applicant has failed to demonstrate that she performed diplomatic or semi-diplomatic duties, she is ineligible for consideration under Section 13, and it is unnecessary to determine if there are compelling reasons why the applicant or the applicant's immediate family is unable to return to the country represented by the government that accredited the applicant, or that adjustment of the applicant's status to that of an alien lawfully admitted to permanent residence would be in the national interest.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. The applicant has failed to establish that she performed diplomatic or semi-diplomatic duties and that the AAO’s previous decision was incorrect based on the evidence of record at the time of the initial decision. 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 motion will be dismissed.

ORDER: The motion is dismissed.