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U.S. Citizenship  
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Services

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FILE:

Office: WASHINGTON DISTRICT

Date:

OCT 16 2008

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:

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.

Robert P. Wiemann, 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 Bolivia 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 the spouse of 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 field office director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that her spouse performed diplomatic or semi-diplomatic duties, that he failed to maintain diplomatic status, that compelling reasons prevent the applicant's return to Bolivia, or that her adjustment would be in the national interest. *Field Office Director's Decision*, dated November 16, 2007.

On appeal, counsel contends that the applicant's spouse is currently in removal proceedings, which is ample evidence that he is no longer maintaining his diplomatic status. *Appeal Brief* at 1. Counsel further asserts that "as an avatar of the [former] regime" the applicant and her spouse would "certainly face persecution and harassment" from the current leftist government of President Juan Evo Morales. *Id.* at 1. Counsel asserts that the applicant and her spouse meet the standard to be granted asylum based on their fear of persecution in Bolivia, and that the standard for adjustment of status under Section 13 is a lower standard. *Id.* at 2-3.

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.

(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 his 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 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).

A review of the record shows that the applicant and her spouse were admitted in A-1 status on January 25, 2002 and that her spouse served as a "Consular Agent" at the Consulate General of Bolivia in San Francisco from June 2001 to August 31, 2004. *See Letter of [REDACTED] Consul General of Bolivia, Los Angeles, California*, undated; *Sworn Statement of Virginia Alvestegui*, dated October 18, 2006; *Form I-94*.

The record shows that the applicant and her spouse failed to maintain status under section 101(a)(15)(A)(i) of the Act after August 31, 2004. The applicant applied for adjustment of status on February 21, 2006. Therefore, the field office director's finding that the applicant had not demonstrated that she and her spouse failed to maintain status is withdrawn.

The field office director also erred in finding that the applicant's duties were not diplomatic or semi-diplomatic. The terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. The AAO acknowledges 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. 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, 8th Edition, 2004* (Diplomacy: The art and practice of conducting negotiations between national governments). The inclusion of the term semi-diplomatic in 8 C.F.R. § 245.3 indicates that those who did not engage in overt negotiation or representation, but who performed duties in direct support of such activities, may also be considered for adjustment of status under Section 13 unless their duties were merely custodial, clerical or menial.

[REDACTED], Consul General of Bolivia in Los Angeles, California, states in his letter that the applicant was responsible for "accounting of the Consulate as well as to issue official documents such as passports, power of attorneys, legalizations, etc." In her sworn statement, the applicant stated that her spouse "provided services to the [g]eneral public." These descriptions indicate that the applicant acted on behalf of the government of Bolivia in its dealings with citizens of foreign countries, similar to U.S. consular officials posted overseas. The AAO finds that such duties are semi-diplomatic and diplomatic in nature. Accordingly, the field office director's determination that the applicant did not perform diplomatic or semi-diplomatic duties is withdrawn.

However, the AAO concurs with the field office director's determination that the applicant has failed to establish compelling reasons that render her unable to return to Bolivia. A well-established "commonsense" canon of statutory construction provides that the meaning of a word in a statute is given more precise content by the

neighboring words with which it is associated. *U.S. v. Williams*, 128 S.Ct. 1830, 1839 (May 19, 2008). In interpreting the language of a statute, courts use the ordinary meaning of terms unless context requires a different result. *Gonzalez v. Carhart*, 550 U.S. 124, 127 S.Ct. 1610, 1631 (2007). 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 phrase “compelling reasons” must be read in conjunction with the term “unable” to correctly interpret the meaning of the words in context. 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 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.

Furthermore, 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 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 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). The legislative history supports the plain meaning of the language in Section 13 that those eligible for adjustment of status under Section 13 are former diplomats that have been rendered essentially stateless or homeless as a consequence of political conflict and are thus *unable* to return to and live in their countries.

In both the applicant’s sworn statement and an affidavit from the applicant’s spouse dated July 25, 2006, they state that the harm they fear in Bolivia is that the applicant’s spouse will not be able to continue his employment with the Consulate General because government positions are given only to “cronies” of President Morales. However, the record shows that the applicant was no longer employed as a consular agent at the Consulate General as of August 31, 2004, and that the election won by President Morales did not occur until December 18, 2005. In his affidavit, the applicant’s spouse states that the termination of his employment as a consular agent resulted from a “[p]olitical decision by the Consulate” because of a “[c]hange in government.” However, the fact that the applicant’s spouse had not been employed at the Consulate General for over a year on the date President Morales was elected indicates that his termination was not the result of a decision taken by the current administration in Bolivia. Furthermore, in his letter, Consul [REDACTED] does not indicate that the applicant’s spouse was terminated from his position at the Consulate General or provide a reason for his departure. Thus, the reason or reasons underlying the choice by the applicant’s spouse to discontinue his employment at the Consulate General, or for which his employment was terminated, are not clear from the record. The applicant’s claim that

her spouse could now return to his government employment were it not for the most recent change in government in Bolivia is not substantiated in the record. The applicant has not indicated the nature of her spouse's or her political views or affiliations other than her spouse's past employment as consular agent. The articles and reports submitted by counsel on appeal do not show that former consular officials such the applicant's spouse, or their immediate relatives, are generally subjected to treatment of a persecutory nature in Bolivia. The AAO acknowledges evidence of political turmoil in Bolivia, but the applicant has failed to demonstrate that she would experience harm as a consequence thereof that constitutes compelling reasons under Section 13. The AAO also acknowledges the evidence showing that the applicant is employed and makes positive contributions to the United States, but concludes that the applicant has failed to meet her burden of proof in demonstrating that there are compelling reasons that prevent her and her spouse from returning to Bolivia.

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 there are compelling reasons preventing her return to Bolivia. 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.