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U.S. Citizenship
and Immigration
Services

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FILE:



Office: WASHINGTON DISTRICT

Date: OCT 31 2008

IN RE:

Petitioner:



PETITION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Zaire (now Democratic Republic of Congo (“Congo”)) 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 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, that compelling reasons prevent her return to Congo, or that her adjustment would be in the national interest. *Decision of Field Office Director*, dated March 12, 2008.

On appeal, counsel contends that the director erred in finding that the applicant’s duties were not semi-diplomatic in nature. *Statement from Counsel on Form I-290B*, dated April 11, 2008. Counsel emphasizes that the Ambassador from Congo stated that the applicant is experienced in the diplomatic field and that she performed duties such as conducting diplomatic correspondence, arranging meetings between diplomatic staff and members of the United Nations, preparing diplomatic logs to the government of Congo in Kinshasa, processing visas, representing Congo at UNICEF meetings at the United Nations. *Id.* at 2 (quoting *Letter from the Ambassador of the Permanent Mission of the Democratic Republic of Congo to the United States*, dated April 4, 2008.) Counsel further asserts that approval of the present application would be in the national interest, as the applicant is a skilled health care worker, a field in need of professionals in the United States. *Id.*

The applicant states that it is unreasonable for her to return to Congo, as she suffered an accident in December 2006 that left her totally disabled. *Statement from the Applicant*, dated April 11, 2008. She explained that everything has changed in Congo, and that there is an ongoing civil war. *Id.* at 1. She further indicates that she was not paid her salary for her work for the government of Congo for many months. *Id.*

The record contains, among other documents, a statement from counsel on Form I-290B; a letter from the Ambassador of the Permanent Mission of the Democratic Republic of Congo to the United States; statements from the applicant; a copy of the applicant’s passport; a copy of the applicant’s birth certificate, and; documentation from the U.S. Department of State. The entire record has been reviewed in rendering a decision on 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 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 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 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 establishes the applicant's eligibility for consideration under Section 13. The applicant was admitted in G-1 status on September 14, 1988 and served as an Administrative Secretary for the Permanent Mission of Zaire to the United States in New York, New York until October 1993. *Experience Letter from the Permanent Mission of Zaire to the United States*, dated January 20, 1994.

The record shows that the applicant was admitted under section 101(a)(15)(A)(i) of the Act, but the field office director found that the applicant did not perform duties of a diplomatic or semi-diplomatic nature. The AAO does not concur. 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). The applicant has submitted sufficient evidence to show that her duties were of a diplomatic or semi-diplomatic nature. For example, the applicant represented the government of Congo at a UNICEF meeting at the United Nations, which is a diplomatic function. The applicant conducted correspondence on behalf of Congo with United Nations contacts and other permanent missions, which can be deemed a semi-diplomatic or diplomatic activity. The applicant further performed visa processing. Accordingly, the determination by the field officer director that the applicant did not perform diplomatic or semi-diplomatic duties is withdrawn.

Nevertheless, the AAO concurs with the field office director's determination that the applicant has failed to establish compelling reasons that prevent her return to Congo. The applicant's stated reasons for not returning to Congo are not compelling reasons under Section 13. As discussed above, 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.

Counsel does not address whether the applicant can return to Congo. The applicant states that it is unreasonable for her to return to Congo, as she suffered an accident in December 2006 that left her totally disabled. *Statement from the Applicant* at 1. She explained that everything has changed in Congo, and that there is an ongoing civil war. *Id.* She further indicates that she was not paid her salary for her work for the government of Congo for many months. *Id.*

While the applicant provides that she cannot return to Congo due to a permanent disability, she has not submitted documentation to support that she has a disability resulting from an injury. Additionally, such injury, unrelated to her work for the government of Congo, does not constitute a compelling reason that she cannot return to Congo as contemplated by Congress in enacting Section 13.

The applicant has not described any particular threat to her based on her prior employment with the government of Congo. While she was not paid for her work in a timely manner, she has not shown that such delay was specific to her or based on her activities. Nor has she shown that she was not eventually paid, or that the current government was responsible for the delay.

The applicant has not indicated that the current government of Congo has an interest in her due to her prior work, such that she is at risk of harm should she return. The general threat of harm due to civil war or instability in Congo is not a sufficiently compelling reason under Section 13. The AAO notes that the applicant has not submitted evidence showing that she is at greater risk of harm than common citizens because of her past government employment, political activities or other related reasons. The general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. It is also noted that the State Department has objected to the applicant being granted adjustment of status and indicated that it does not believe that compelling reasons prevent the applicant's return to Congo. *See* Interagency Record of Request (Form I-566). The AAO therefore concludes that the applicant has failed to meet her burden of proof in demonstrating that there are compelling reasons that prevent her return to Congo.

Counsel asserts that approval of the present application would be in the national interest, as the applicant is a skilled health care worker, a field in need of professionals in the United States. *Statement from Counsel on Form I-290B* at 2. However, the applicant reported that she was the victim of an accident that left her permanently disabled. The applicant has not provided medical documentation to reflect whether she is currently able to work, such that her presence will result in a contribution to the health profession in the United States. The applicant has not asserted other reasons for which her presence in the United States is in the national interest. Thus, she has not shown that adjusting her status to permanent resident 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 there are compelling reasons preventing her return to Congo, or that adjusting her status to permanent resident 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 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.