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U.S. Citizenship  
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Services

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[REDACTED]

FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: SEP 04 2008

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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 sustained.

The applicant is a native and citizen of Venezuela who is seeking to adjust his status to that of lawful permanent resident under section 13 ("Section 13") of the Immigration and Nationality Act of 1957, Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(G)(i) of the Immigration and Nationality Act.

The field office director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that he performed diplomatic or semi-diplomatic duties, that compelling reasons prevent his return to Pakistan, or that his adjustment would be in the national interest. *Field Office Director's Decision*, dated January 17, 2008.

In a brief submitted on appeal, counsel contends that the field officer director's restrictive definition of "diplomatic or semi-diplomatic duties" as encompassing only "conducting negotiations between foreign governments" but not including duties that are "advisory and research oriented" is unwarranted and without support in statute, regulations or case law. Counsel asserts that diplomacy involves the entire process of negotiations, dialogue and intercourse between nations, and that a prior decision by the AAO indicates that a more expansive definition of the terms diplomatic and semi-diplomatic is appropriate. Counsel observes that the applicant, as the assistant to ██████████ the former Venezuelan Ambassador to the United Nations, performed research and advised ██████████ in his role as a diplomat and contends that such duties cannot be characterized as merely "custodial, clerical, or menial." Counsel contends that, as stated in *Matter of Vargas*, 14 I&N Dec. 354 (Reg. Comm. 1973) at 355, Section 13 is remedial legislation and a broad interpretation should be given to its provisions if necessary to carry out the intent of Congress.

Counsel also asserts that the decision improperly discounts the evidence concerning the applicant's fear of persecution in Venezuela. Counsel cites, among other documents, letters from ██████████, a former diplomat, a Roman Catholic Cardinal, the applicant's mother, and a leader of a Venezuelan opposition group, as well as other articles and reports, as evidence that the applicant is at risk of harm in Venezuela. In particular, counsel asserts that the views of ██████████, who has publicly condemned the actions of the Venezuelan government, have been imputed to the applicant, which places him in danger in Venezuela. Counsel contends that protecting the applicant from persecution in Venezuela because of his association and support for those who advance the cause of democracy and human rights is in the national interest of the United States.

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.

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 which 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 applicant's eligibility for consideration under Section 13. He was last admitted into the United States in G-1 status on January 16, 2005 and served as an assistant to Venezuela's Ambassador/Permanent Representative to the United Nations. See *Sworn Statement of* [REDACTED] dated July 11, 2006. The applicant has stated that he was refused access to the Venezuelan Mission to the U.N. after [REDACTED] resigned on March 5, 2004 and publicly denounced the Venezuelan government. *Id.*, see also *Letters of* [REDACTED], dated March 14, 2006 and March 19, 2008. The State Department has notified the Service that the applicant's diplomatic status was terminated on April 29, 2005.

Therefore, per the requirements of Section 13, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(G)(i) of the Act but no longer held that status at the time of his application for adjustment on December 22, 2005.

Although the applicant was admitted under section 101(a)(15)(G)(i) of the Act, the field office director found that he is not eligible for adjustment under Section 13 because he did not perform diplomatic or semi-diplomatic duties. The AAO does not concur. 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. Nevertheless, 8 C.F.R. § 245.3 provides that duties of a custodial, clerical, or menial nature are not to be considered diplomatic or semi-diplomatic for purposes of Section 13 adjustment. The essential role of a diplomat is the representation of a country in its relations with other countries, or, as in this case, international governing bodies. 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); *Webster's New Riverside University Dictionary, 2nd Edition, 1988* (Diplomacy: 1. The art or practice of conducting international relations, as in negotiating alliances, treaties, and agreements 2. Loosely, foreign policy); *Black's Law Dictionary, 7th Edition, 1999* (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 not specifically engaged in negotiations between countries, but who perform duties supporting or relating to such negotiations, may also be considered for adjustment of status under Section 13 unless their duties are merely custodial, clerical or menial. The evidence shows that the applicant, as assistant to the Ambassador/Permanent Representative, had a formal advisory role and performed duties that were not merely custodial, clerical or menial. [REDACTED] has indicated that, as part of the applicant's advisory role, the applicant engaged "diplomatic advisors to other ambassadors and high ranking consular staff . . . in conversations . . . to obtain as much critical information as possible without giving away our government's position on the issue at hand or indicating a bias toward any potential result." *Letter of [REDACTED]*, dated March 19, 2008. In his sworn statement, the applicant indicates that he was charged with conducting research on, among other things, substantive political issues between Venezuela and its neighbors. The evidence in the record is sufficient to show that the applicant performed duties of a diplomatic or semi-diplomatic nature. Accordingly, the field office director's finding to the contrary is withdrawn.

The issues before the AAO in the present case are, therefore, whether the record establishes that the applicant has compelling reasons that preclude his return to Venezuela and that his adjustment would serve U.S. national interests. 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. 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.

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 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 peacefully in their respective countries.

In his letter of March 19, 2008, [REDACTED] states that at the time of his resignation and public criticism of the Hugo Chavez-led Venezuelan government, the applicant "was a close supporter and advisor" and that Mr. [REDACTED] "statements and positions regarding the current government of Venezuela have been and will continue to be attributed by association" to the applicant. [REDACTED] indicates that [REDACTED] has not experienced retribution for his opposition to the government since returning to Venezuela, but attributes this to his "status as a recognized public figure with a long and distinguished diplomatic career [that] shields me to a degree from overt retribution from

either government or outside groups.” [REDACTED] believes, however, that his “friends and supports, especially those who were closest to me at the time of my public resignation, are much more vulnerable as they do not have the protection afforded by the public eye.” [REDACTED] states that “other close supporters of mine and their families have been threatened and harassed by individuals and groups in Venezuela.”

The applicant has also submitted a letter dated April 2, 2008 from his mother, [REDACTED], in which she states that as a consequence of his work for [REDACTED] the applicant “and our family have been threatened and harassed.” She asserts that her residence has been vandalized with graffiti messages such as “death to the henchmen of imperialism” and that she has received “numerous phone calls” directly threatening her and the applicant with violence. The applicant has also submitted letters from [REDACTED], a Venezuelan Roman Catholic priest, [REDACTED], a leader of a Venezuelan opposition group, [REDACTED] L., a former Venezuelan diplomat, and [REDACTED] a Roman Catholic Cardinal and the Archbishop of Caracas, in which the authors attest that, based on their experiences in Venezuela and their acquaintance with the applicant and his family, the applicant’s fear of harm in Venezuela is justified. The applicant has also submitted newspaper reports detailing [REDACTED] resignation and public condemnation of the Venezuelan government.

The AAO determines that the evidence submitted by the applicant is sufficient to demonstrate that there are compelling reasons preventing his return to Venezuela. The evidence shows that the applicant has close ties to a former ambassador who resigned his position and publicly condemned the authoritarian practices of the current Venezuelan administration. It demonstrates that the applicant lost his diplomatic position as a consequence of his assistance to the former ambassador, and that he has been threatened. The evidence submitted by the applicant shows that the Venezuelan government has persecuted opposition figures in recent years. Thus, based on the evidence in the record, the AAO determines that the Venezuelan government is hostile to the applicant, and that his fear of persecution in Venezuela is a compelling reason preventing his return there. Accordingly, the field office director’s decision that the applicant does not have compelling reasons preventing his return to Venezuela is withdrawn.

The applicant has also demonstrated that his adjustment is in the national interest of the United States. The record reflects the applicant’s good character and his efforts in supporting democracy and respect for human rights in his country. There is no evidence that the applicant has engaged in any activities, such as criminal acts, that are contrary to the national interest. Accordingly, the applicant has demonstrated that the U.S. national interest would be served by his adjustment to lawful permanent resident status under Section 13.

For the reasons discussed above, the AAO finds the applicant to have established that there are compelling reasons preventing his return to Venezuela and that his adjustment will benefit the U.S. national interest. Accordingly, the appeal will be sustained.

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 met that burden.

**ORDER:** The appeal is sustained.