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



U.S. Citizenship
and Immigration
Services

A3

[REDACTED]

FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: **APR 21 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:

[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.


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 AAO matter will be remanded for further action and consideration.

The applicant is a native and citizen of Uganda who is seeking to adjust his 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)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

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.

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 record in this matter provides the following procedural history. The applicant entered the United States on May 15, 1992 in A-1 classification to work for the Ugandan Embassy in Washington D.C. The applicant left the Ugandan diplomatic service on June 30, 1992. In September 1994 the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, requesting adjustment of his status pursuant to Section 13. The field office director denied the application on April 23, 1999. The field office director determined that the applicant had failed to demonstrate that compelling reasons prevent his return to Uganda and that his adjustment of status would be in the national interest of the United States. The field office director specifically noted the affidavits in the record but found that the applicant had not submitted any tangible evidence in support of the information in the affidavits. The field office director also noted the exhibits attached to the applicant’s application but found that the applicant had not established how the information in the exhibits directly or indirectly related to the application. The field office director also noted that [United States Citizenship and Immigration Services (USCIS)] had been advised by the Department of State on July 14, 1998 that it did not have an objection to the grant of the application to adjust status under Section 13. The field also director further noted that the Department of State indicated that the applicant had terminated his position with the Embassy of Uganda on June 30, 1992 to return to the Ministry of Foreign Affairs, in Kampala, Uganda.

Counsel for the applicant timely filed an appeal of the field office director’s decision. The appeal packet was not forwarded to the AAO until May 12, 2008. Upon review of the procedural history of the matter and the lapse of time between the adjudication of the application, the AAO issued a request for further evidence (RFE) on December 19, 2008. The AAO noted that counsel or the petitioner should submit a copy of any brief or additional evidence submitted with counsel’s initial appeal, as well as any new evidence to demonstrate that at the present time there are compelling reasons preventing the applicant’s return to Uganda and that his adjustment would be in the national interest of the United States.

Counsel timely submitted a response to the RFE with the original brief and exhibits and an additional brief and new documentation.

Upon review of the record, the AAO is remanding this matter to the field office director to consult with the Secretary of State pursuant to 8 U.S.C. § 1255b(b), to obtain her advice on this application based on current information. The AAO also observes that the applicant disagrees with the field office director’s interpretation of the Department of State’s indication that the applicant had terminated his position with the Embassy of Uganda on June 30, 1992 to return to the Ministry of Foreign Affairs, in Kampala, Uganda. The applicant on appeal, through counsel, indicates that he terminated his position with the Embassy of Uganda but did not expect to return to Uganda, and instead filed for asylum in the United States.¹ The record does not include a copy of the Department of State’s July 14, 1998 advice to assess the reliability of the field office director’s statement. As the record does not include the Interagency Record of Request (Form I-566) and does not include the Department of State’s current assessment, the AAO will remand the application.

¹ The record includes the applicant’s Form I-589, Application for Asylum, filed in December 1992, the subsequent denial of the application, and a granted [USCIS] motion to terminate deportation proceedings against the applicant until the Section 13 matter had a final adjudication.

In addition, the AAO notes, as referenced above, that 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.

The AAO has reviewed the information in the record, including the affidavits and exhibits submitted. The AAO observes that the applicant has not submitted evidence substantiating his belief that he would be a target of the current Ugandan government because of his political acts in the United States. The AAO does not find that the applicant has substantiated his relationship to individuals he claims have been targeted. The AAO finds that the applicant has not provided an adequate explanation for his appointment to an overseas post by the Ugandan government and the subsequent “harassment” he experienced from Ugandan government employees when he entered the post with no change in the government that accredited him. The AAO also notes that the petitioner has not adequately articulated why he would currently be the target of the Ugandan government, a government that appears to tolerate although not embrace opposition parties. 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 observes that the information in the record is currently insufficient to establish that the applicant would be at greater risk of harm because of his past government employment, political activities, or other related reason.

For the reasons discussed above, the matter will be remanded to the field office director to enter a new decision. The field office director may request any additional evidence deemed necessary to assist her with the determination. 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.

ORDER: The director’s April 23, 1999 decision is withdrawn. Because the application is not approvable, the application is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.