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**U.S. Citizenship
and Immigration
Services**

A3

[REDACTED]

FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: **FEB 23 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 appeal will be dismissed.

The applicant is a native and citizen of Honduras 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).

The field office director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent his return to Honduras and that his adjustment would be in the national interest of the United States. The field office director also noted that the Department of State issued its opinion on November 5, 2007 advising that the applicant's reasons to remain in the United States are not compelling. *Decision of Field Office Director*, dated November 28, 2007.

On appeal, counsel for the applicant asserts that the field office director erred in her decision. Counsel submits a brief and documentation in support of 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 [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(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.

A review of the record establishes the applicant's eligibility for consideration under section 13 of the 1957 Act. He entered the United States on or about June 1994 as the Consul General of Honduras in San Francisco. He served as the consul general until February 12, 1998 when he was removed from the appointment. *Letter from [REDACTED] of the Republic of Honduras on behalf of [REDACTED] in the Office of Foreign Relations*, dated February 10, 1998. Accordingly, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(i) of the Act but no longer held that status at the time he filed his application for adjustment on March 11, 1998.

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 Honduras and that his adjustment would serve U.S. national interests – requirements set forth in section 13(b) of the 1957 Act.

The AAO concurs with the field office director's determination that the applicant failed to establish compelling reasons that prevent his return to Honduras. 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.

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).

The AAO observes that in the February 10, 1998 letter removing the applicant from his general consul post, the General Secretaryship of the Republic of Honduras on behalf of the Secretary of State in the Office of Foreign Relations thanked the applicant for his service and stated: “[the applicant] will be entitled to his corresponding costs of transfer and voyage.” This letter suggests that the applicant not only had the ability to return to Honduras but that the costs of returning to Honduras would be paid by the Honduran government. The applicant contends, however, that although the Honduran government did not prevent him from a return to Honduras, that there is a scheme of government persecution against his father and his father’s immediate family.

In this regard, the record includes the applicant’s April 28, 2000 personal statement and newspaper clippings regarding the prosecution of the applicant’s father, the former director of the Honduran national telephone company, for mismanagement of funds. The newspaper clippings and the applicant’s statement indicate that the applicant’s father vigorously defended this prosecution within the Honduran court system and that the matter continued before the Honduran courts and was still continuing at the time of the appeal. The applicant asserts that his removal from his position as consul general in the Honduran San Francisco Consulate and the refusal of the Honduran government to issue a Certificate of Good Standing¹ to him after the removal is due to the actions taken against his father in Honduras. The applicant indicates that his brother was denied a government position and was told that although he was qualified, certain government officials would not let him be hired because of his father. The record includes a copy of his brother’s April 10, 2000 statement to this effect. The applicant further indicates that both of his brothers now reside in and are citizens of Canada. The applicant states his

¹ The applicant explains that a Certificate of Good Standing shows that the former government employee does not have outstanding balances with the State and is not part of any pending litigation. The record includes the translation of a document titled “Certification” which indicates that the Honduran Secretary General had accepted a “new declaration of property” from the applicant but that the certification does not constitute a “Certificate of Solvency” and does not serve as exoneration from events established within the law. The record suggests that a Certificate of Solvency and a Certificate of Good Standing are the same or similar documents. The applicant indicates that without such a “certificate” he is unable to apply for government jobs and that private sector employers would also expect that he would have been issued a Certificate of Good Standing upon release from a government position.

belief that it would be difficult for either him or his wife to find a job in Honduras because of “the baseless legal proceedings, [his] family’s political situation, and the persecution [they] face.”

On appeal, counsel for the petitioner submits an opinion prepared by [REDACTED] a professor of International and Comparative Law at Nova Southeastern University, Shepard Broad Law Center and a Chair of the Board of Directors of the Inter-American Center for Human Rights and Co-Director of the American-Caribbean Law Initiative, dated March 27, 2008. [REDACTED] opines that the denial of the applicant’s Certificate of Good Standing designates the applicant as a “target of serious persecution and harassment from all sectors of Honduran society, including the Government, security forces, any entity related to the Government or which does business with the Government, and any other societal entities that may be aware of his designation as a person not of ‘Good Standing’.” Professor Willets also cites the 2006 edition of the United States State Department Report on Country Conditions as it relates to Honduras and concludes that the State Department’s finding that the Honduran executive and legislative branches were subject to corruption and political influence supports the applicant’s claim that his family was subjected to persecution. [REDACTED] opines: “that it is much more probable than not that [the applicant] would experience similar or worse persecution than he has already experienced were he to return to Honduras.”

The AAO has also reviewed the January 15, 2008 declaration of [REDACTED] Former National Commissioner of the Human Rights Office of Honduras who indicates that his office is aware through “mass communication” and several reports sent to the High Commissions Office of the “persecution and pre-judgment by several government accounting and comptroller offices” and the absence of legal due process brought against the applicant’s father since 1996 until today. The declarant notes his belief that the applicant’s Certificate of Good Standing will be scrutinized in relation to the applicant’s father’s case and that without the document the applicant will not be able to work in public office and will find it difficult to work in the private sector. The AAO has further reviewed the March 6, 2008 statement of [REDACTED] who declares that due to the magnitude of the coverage of the applicant’s father’s case, the applicant’s return to Honduras would be very difficult since he would find it hard to obtain employment.

On appeal, counsel for the applicant also cites a Ninth Circuit case for the proposition that persecution includes the deliberate imposition of economic disadvantage based on a protected ground in the asylum context.

As noted above, the Honduran government has not barred the applicant from a return to Honduras. Neither does the record substantiate that the applicant will be arrested if he returns to Honduras. The AAO has also reviewed the applicant’s statements, the opinions set forth on his behalf, and the information in the record regarding his father and other members of his family. The record in this matter demonstrates that the applicant’s father has been prosecuted and has won several appeals relating to warrants of arrest but is insufficient to establish that the ongoing prosecution of the applicant’s father shows that he has been the victim of persecution. The AAO acknowledges the applicant’s belief and the statements of other individuals who also profess this belief, but it is not possible to conclude from the evidence in the record that the actions against the applicant’s father are persecutory actions disguised as prosecution rather than the Honduran government’s prosecution of a government official

whose actions may have been corrupt. Moreover, although the applicant states that he has not been issued a Certificate of Good Standing, the applicant has not established that such a denial is persecutory rather than administrative or a prelude to prosecutorial action. In addition, the applicant has not established that the lack of such a certificate would prohibit him from obtaining work, other than government work. The AAO acknowledges that the applicant's brothers left Honduras for Canada because their telecom company did not receive the government contracts that were given to others; however, their decision to leave Honduras has not been demonstrated to be due to persecution and further does not substantiate that the applicant would be persecuted. 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)).

Upon review of [redacted] opinion and the statements of [redacted] and [redacted], the AAO finds their representations conclusory. [redacted] and [redacted] do not provide examples of other individuals whose Certificates of Good Standing have been withheld and the consequences of such withholding. Nor do these individuals provide evidence that the withholding of the certificate is a prelude to persecution of the applicant rather than a prelude to possible prosecution. These individuals do not indicate that they have interviewed the applicant or have conducted personal investigations of the Honduran government and any evidence the Honduran government may possess against the applicant's father or the applicant. There is thus an inadequate factual foundation established to support their opinions. The opinion and statements proffered are based on speculation and the general conditions of Honduras, not the actual substantive circumstances of the applicant and his family. The record is deficient in this regard. The AAO recognizes the U.S. State Department's Country Report on Honduras and acknowledges that the Honduran executive and legislative branches have been subject to corruption and political influence. However, in this matter, the U.S. State Department has also objected to the applicant being granted adjustment of status pursuant to section 13 and indicated that it does not believe that compelling reasons prevent the applicant's return to Honduras. See Interagency Record of Request (Form I-566). The opinion of [redacted] and the statements of [redacted] and [redacted] are insufficient to overcome the U.S. State Department's finding that the applicant does not have compelling reasons to return to Honduras. When an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The AAO also acknowledges the March 17, 2008 letter submitted on the applicant's behalf by [redacted] Member of the Congress of the United States. [redacted] notes her belief that it would be a hardship for the applicant and his family to return to Honduras "where they no longer have close ties and where they may be subject to persecution because of his political opinion, which the Honduran government will impute to him because of his father's political opinion." The AAO finds, however, that the record is deficient in establishing a specific threat against the applicant or his family or that he would be subject to persecution because of his or his father's opinion.

Although the applicant believes that the lack of a Certificate of Good Standing would result in difficulty for the applicant finding a job of similar stature and commensurate with his education and experience, the AAO does not find that the applicant's circumstances demonstrate that he is unable to return to Honduras. The AAO notes that the applicant is concerned with the economic situation in Honduras due to Hurricane Mitch in 1998 as well as the difficulty his children may have in adapting to an environment other than the United States. However, hardship in finding work or in adapting to a different country does not demonstrate compellingly that the applicant is unable to return to Honduras. The evidence of record does not show that the applicant is unable to return because of any action or inaction on the part of the government of Honduras or other political entity there as required under Section 13. The AAO finds that the applicant has not submitted substantive evidence showing that he is at greater risk of harm because of his past government employment, political activities or other related reason.

On appeal, counsel for the applicant cites a Ninth Circuit case for the proposition that persecution includes the deliberate imposition of economic disadvantage based on a protected ground in the asylum context. The AAO, in this matter, has not made a determination whether the applicant meets the eligibility requirements for asylum or withholding of removal. The AAO's finding that the applicant has not established compelling reasons that prevent his return to Honduras is not equivalent to such a determination. The Ninth Circuit matter, thus, is not analogous to this matter. As determined above, the AAO concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to Honduras. Also on appeal, counsel asserts that the United States has a national interest in complying with its international treaties, including Article 33 of the 1951 Convention Relating to the Status of Refugees, and that the applicant is a refugee because he has a well-founded fear of persecution on account of his political opinion.

Although unnecessary to address as the applicant has failed to demonstrate that there are compelling reasons preventing his return to Honduras, the AAO briefly notes that the applicant has also failed to demonstrate his adjustment of status is in the national interest. First, the AAO reiterates that its decision finding that the applicant has not established compelling reasons that prevent his return to Honduras is not a determination regarding the eligibility requirements for asylum or withholding of removal. Thus, the applicant does not hold the status of an asylee, an individual who applied for and was granted refugee protection while in the United States. Neither is the principle of *nonrefoulement* relevant to the applicant's application for adjustment of status. U.S. obligations as a signatory to the 1967 Protocol relating to the Status of Refugees are satisfied by the language of section 241(b)(3) of the Immigration and Nationality Act, which prevents the removal from the United States of persons to countries where their life or freedom would be threatened because of race, religion, nationality, membership in a particular social group or political opinion. As the issue of asylum and withholding of removal are not before the AAO, counsel's assertion that the adjustment of the applicant would support the principle of *nonrefoulement* and serve U.S. national interests is not persuasive. Moreover, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

In addition, the applicant indicates that he has a Masters Degree in Business Administration, has worked for companies with international ties, and is an active contributing member to the society and community in which he currently lives. The applicant indicates that his wife is also a college graduate and is a licensed investment advisor and that his children are doing well in school. The applicant notes that he and his family perform volunteer work and that he has never requested financial assistance from any government agency or organization. The AAO acknowledges the applicant's contribution as a volunteer and his work in the private sector. However, these general and positive attributes do not specifically relate to the national interest of the United States. The applicant has not provided definitive information showing how or why his continued residence in the United States will benefit the U.S. government. The applicant has not established his adjustment of status is in the national interest.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. He has failed to establish that there are compelling reasons preventing his return to Honduras and that his continued residence in the United States 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 he or 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.