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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

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[REDACTED]

FILE:

[REDACTED]

Office: WASHINGTON DISTRICT

Date:

JUN 11 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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. The Administrative Appeals Office (AAO) summarily dismissed the subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The appeal will be dismissed and the petition denied.

The applicant is a national of Ecuador 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 Ecuador and had failed to establish why his adjustment of status 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 April 4, 2008 advising that it could not recommend this matter as the applicant's reasons to remain in the United States are not compelling.

On appeal, counsel for the applicant asserted that the field office director erred in her decision and indicated that her brief and additional evidence would be submitted to the AAO within 30 days. The AAO did not find a brief or additional evidence in the record on appeal. Although counsel submitted a brief and additional evidence in response to the AAO's notice that the record did not include this information, the AAO summarily dismissed the appeal as counsel did not provide evidence that she had timely submitted the information for consideration. On motion, counsel provides her affidavit and points of law that allow for the matter to be reopened and the evidence submitted to be considered.

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 in A-1 classification in November 1996 to serve as Consul General of Ecuador in San Francisco, California. The Department of State was notified of the termination of the applicant's A-1 status as of June 10, 1997. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status on July 22, 1997. 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.

The issue before the AAO in the present case is whether the record establishes that the applicant has compelling reasons that preclude his return to Ecuador, a requirement 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 Ecuador. 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, United States 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 applicant was appointed Consul General of Ecuador and assigned to San Francisco, California in November 1996. The applicant’s sister, [REDACTED], was elected vice-president of Ecuador also in 1996. In February 1997, the president of Ecuador was declared unfit and was deposed by the Ecuadorian Congress. During the constitutional crisis that ensued, the applicant’s sister served as president for a few days until the Ecuadorian Congress named Fabian Alarcon interim president. Fabian Alarcon’s presidency was subsequently endorsed by a May 1997 popular referendum. In the applicant’s sworn statement before a legacy USCIS officer on July 23, 1998, the applicant stated that within two months of his sister’s removal from the presidency, he was removed from his position as Consul General, he believes in political retaliation against him and his family. The applicant noted that his father, the ambassador to Uruguay at the time, was also removed from his position.

The applicant also stated that he had returned to Ecuador in December 1997, due to the illness of his father-in-law on advance parole. The applicant indicates that he stayed in Ecuador until January 9, 1998, when he returned to the United States to pursue his adjustment application. The applicant indicated that while in Ecuador he unsuccessfully sought payment for consulting work that he had previously performed for the government of Ecuador but that the money owed to him was frozen by high government officials.

On appeal, counsel for the petitioner presents country condition information and the applicant’s sister’s August 24, 2008 letter. Country conditions show that since 1997 Ecuador has had several presidents who have resigned and been replaced with Congressionally endorsed vice-presidents, and that in November 2006 Rafael Correa was elected in an election that was characterized as generally free, fair, and transparent. Rafael Correa was sworn in as president in January 2007 and continues to hold the position.

In the applicant’s sister’s letter, she indicates that Rafael Correa has a long history of persecuting her family, including the applicant. She indicates: that the Correa government refused to support the

renewal of her position as Secretary General of the Amazon Cooperation Treaty Organization; that when she returned to Ecuador in 2007 she “found a very hostile environment drawn by Mr. Correa’s administration;” that she tried to continue a television program but was attacked by Mr. Correa; that in July of 2008 after criticizing the policies of the Correa administration, “they tried to shut down [her] media company;” that an anonymously distributed pamphlet included her picture and depicted her as part of Ecuador’s reigning political party; and that for these reasons she decided to not live in Ecuador and only return there to oversee her businesses. The applicant’s sister further indicates that Mr. Correa’s “long history of harassment towards her family” causes her to believe that it would be difficult for the applicant to find work and to live peacefully in Ecuador. The applicant’s sister notes that Mr. Correa does not seem to agree with Ecuador’s bond with the United States and that her brother’s living in the United States for so many years would be a red flag to Mr. Correa.

The AAO acknowledges that the history of Ecuador shows a country that for many years has been politically unstable; however, the elections that have been conducted have been observed to be generally fair. The AAO finds that the record does not provide substantive evidence demonstrating that the applicant is at greater risk of harm at this time because of his past government employment, political activities, or other related reasons. The applicant has not established that he or his family is a target of the government of Ecuador. The AAO observes that the applicant returned to Ecuador after he was removed from his Consul General position leading to the conclusion that the applicant is not unable to return to Ecuador based on his political activities while Consul General in the United States. In addition, the AAO observes that his sister indicates that she continues to have businesses in Ecuador although she chooses to live outside the country to avoid harassment from past political opponents.

As noted above, the Ecuadorian government has not barred the applicant’s return to Ecuador. Neither does the record substantiate that the applicant will be arrested or persecuted if he returns to Ecuador. The AAO has reviewed the applicant’s statements and his sister’s letter regarding her treatment and belief that the applicant would find it difficult to find work in Ecuador. The AAO acknowledges that the applicant’s sister does not live in Ecuador because she disliked the harassment she experienced but notes that she continues to operate businesses in Ecuador. The AAO acknowledges that the applicant may have difficulty in finding a job commensurate with his education and experience, but hardship in finding work or in adapting to a different country does not demonstrate compellingly that the applicant is unable to return to Ecuador. The information submitted regarding the country conditions in Ecuador show that the current government may not be as closely tied to the United States as Ecuadorian governments in the past, but there is no information in the record that establishes a specific threat against the applicant or his family or indicates that he would be subject to persecution because of his or his family’s political opinions. Moreover, 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 Ecuador. *See* Interagency Record of Request (Form I-566).

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 Ecuador 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. The AAO finds that in this matter the applicant has not established compelling reasons that relate to political changes now in effect 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. The AAO does not find that the applicant’s circumstances demonstrate that he and his family are unable to return to Ecuador. The applicant has failed to meet his burden of proof in this regard. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Ecuador, the question of whether adjustment of status would be in the national interest need not be addressed.

For the reason 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 Ecuador. 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.