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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**

A-3

FILE:

Office: WASHINGTON DISTRICT

Date:

APR 20 2010

IN RE:

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:

SELF-REPRESENTED

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 "Perry Rhew".

Perry Rhew
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 Senegal 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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(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 Senegal. The field office director also noted that the Department of State issued its opinion on August 28, 2008 advising that it could not favorably recommend this matter as the applicant's reasons to remain in the United States are not compelling.

On appeal, the applicant submits a statement and documentation.

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 G-1 classification to serve as First Secretary of the Mission of Senegal to the United Nations in New York, New York. He began his service in October 1996 and according to U.S. Department of State records, his service terminated on June 30, 2001. The applicant filed the Form I-485, Application to Register Permanent Resident or Adjust Status, on October 26, 2001. Per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States pursuant to 101(a)(15)(G)(i) of the Act but no longer held that status at the time he filed his application for adjustment; thus the applicant was eligible to file for consideration under section 13 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 Senegal. 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 for Section 13 shows 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). Thus, 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 applicant in this matter attended two interviews conducted by USCIS officers. In the September 9, 2005 interview, when asked what compelling reason prevented him from returning to his country, the applicant replied: “[t]he main reason is that my children start to have education here. And I want them to continue the same education that I got since I stopped [sic]. And also because I like this country.” When asked if he would face persecution in his country, the applicant replied that he did not think so. In the January 7, 2008 interview, when asked what compelling reasons prevent his return to the country that accredited him, the applicant replied: “[m]y family and I like this country.”

On appeal, the applicant states that after his decision to renounce his G-1 status so that he could live in the United States, the current government in Senegal does not have any confidence in him. The applicant also states that the current Senegalese government has taken some harsh and discriminatory action to deny him employment in the country and that he has been ordered to pay a fine. The applicant also indicates that he was recently diagnosed with cancer and is currently undergoing treatment that he could not safely receive in Senegal. The applicant provides a photocopy of a document written in French that does not include a translation. The applicant also submits an undated form letter welcoming the patient to the Center for Radiation Therapy at Montefiore Medical Park that has the applicant’s name scrawled across the top. The applicant further submits a form letter dated October 15, 2008 that has the applicant’s name filled in as the patient’s name in different ink than the rest of the letter and indicates that the patient was seen on that date at the Center for Radiation Therapy.

The AAO has reviewed the applicant’s responses in the two interviews conducted by a USCIS officer and finds that the applicant’s desire to remain in the United States for the benefit of his children’s education and because he and his family like it here are not reasons that make the applicant unable to return to Senegal as prescribed by Section 13. The AAO has also reviewed the applicant’s statement on appeal and finds that the applicant has not presented evidence that he is a target of the Senegalese government because of his government service or any other activities. The AAO observes that the applicant has not supplied any supporting documentation that the current Senegalese government has denied him employment or has ordered him to pay a fine and that these actions were on account of his government service, rather than because he left the government service. 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 is unable to determine whether the untranslated document supports the applicant’s claim. The applicant is required to submit certified translations of documents. See 8 C.F.R. § 103.2(b)(3). Accordingly, the document is not probative and will not be accorded any weight in this proceeding.

The AAO has also reviewed the two form letters that relate to radiation treatment. Neither document provides sufficient information to establish that the documents are valid as they relate to the applicant. Moreover, there is nothing in the record that establishes that the applicant will be unable to receive medical treatment in Senegal. The applicant has not provided compelling reasons related to political changes in Senegal 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 acknowledges the difficulty the applicant's family faces in returning to a country that they have not lived in for a number of years. However, the general inconveniences and hardships associated with relocating to another country and the applicant's desire to live in the United States do not demonstrate compelling reasons under Section 13. 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 Senegal or other political entity there as required 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 Senegal. 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 Senegal. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Senegal, the question of whether adjustment of status would be in the national interest need not be addressed.

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 Senegal. 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.