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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

File:

[REDACTED]

Office: WASHINGTON DISTRICT

Date: **MAY 05 2010**

IN RE:

Applicant: [REDACTED]  
[REDACTED]

Application:

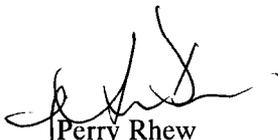
Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Washington, D.C., denied the application for adjustment of status (Form I-485). The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed. The application is denied.

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

The record includes the following facts and pertinent procedural history. The applicant was placed in proceedings before an Immigration Judge on October 20, 1999. On May 24, 2000, the applicant filed a Form I-485 pursuant to Section 13 of the Act. On February 6, 2001, the Immigration Judge issued a "not removal order" and administratively closed the proceedings. Upon review of the record, the AAO finds reference to a Washington District decision on the Section 13 Form I-485 dated May 20, 2002. The decision is not in the file. The record also includes a Form I-290B, Notice of Appeal, filed by the applicant on June 22, 2002. The applicant, in her attachment to the Notice of Appeal, lists each element of the director's decision and her response to each element of the director's decision. The record further includes a May 15, 2009 rejection of the Form I-485, by the Cleveland, Ohio Field Office, as jurisdiction of the Form I-485 rests with the Executive Office for Immigration Review (EOIR). However, a further review of information relating to this particular applicant reveals that the matter was administratively closed by EOIR for the legacy Immigration and Naturalization Service (INS) to complete the adjudication of the Section 13 petition prior to the matter being re-calendared. As the June 22, 2002 appeal of the denial of the Section 13 petition has not been adjudicated, the matter is within the AAO's jurisdiction for the adjudication of the appeal.

Based on the applicant's detail of the May 20, 2002 decision, the field office director denied the application for adjustment of status after determining: that the applicant's assignment to the International Monetary Fund (IMF) on a one-year consulting contract as an economist did not meet the standards of practicing diplomacy and thus the applicant's duties for the IMF could not be classified as diplomatic or semi-diplomatic duties; and that the applicant had established that her adjustment of status would be in the national interest of the United States. It does not appear from the record before the AAO that the field office director made a determination on whether compelling reasons prevented the applicant from returning to Uganda. As the AAO finds that the applicant has not established that she performed diplomatic or semi-diplomatic duties for the country represented by the government that accredited the applicant, the AAO does not reach the issues of: (1) establishing that compelling reasons that prevent the applicant from returning to Uganda; or (2) establishing that the applicant's adjustment of status would be in the national interest of the United States.

The record includes a May 26, 2000 verification from the United States Department of State indicating that the applicant held a special appointee position at the IMF from February 13, 1997 to March 20, 1998 and as a special appointee, she was a holder of a G-2 visa. Although the record includes a Form I-566, Intra-Agency Record of Individual Requesting Change/Adjustment, to or from, A or G Status; or Requesting A or G Dependent Employment Authorization, signed by the applicant on April 27, 2000,

the Form I-566 has not been completed by the State Department regarding its recommendation for the grant or denial of the request.

On appeal, the applicant quotes the director's decision:

In your sworn statement, you say that you were assigned to the International Monetary Fund on a one-year contract as an economist. You stated that you thought your duties "might be" semi-diplomatic in nature. Black's Law Dictionary defines diplomacy as "the art of practice of conducting negotiations between foreign governments for the attainment or mutually satisfactory political relations." The duties you have described do not meet these standards and therefore, cannot be classified as diplomatic or semi-diplomatic in nature.

The applicant, in response, observes that one of the core responsibilities of the IMF is to maintain a dialogue with its member countries on the national and international repercussions of their economic and financial policies. The applicant notes that as an economist/consultant she was assigned eight member countries of the IMF including among others Netherland Antilles, and was in charge of monitoring statistical data submitted by these countries to ensure conformity to international standards. The applicant states that she entered the United States on December 16, 1997 at Miami, Florida from Netherlands Antilles, Curacao where she had participated in the negotiation/consultation mission with the Netherland Antilles government officials on behalf of the IMF. The petitioner notes that it was because of the nature of the duties that she was handling, including participating in negotiation missions with foreign governments on behalf of the IMF, that she believes her duties were semi-diplomatic in nature.

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.

This matter presents the unusual situation of an alien who has not been accredited by any specific government of a country in which the applicant is a native or a citizen. The record reflects that the applicant is a citizen of Uganda and obtained accreditation as a G-2 consultant/economist apparently while working in the Netherlands Antilles, Curacao where she was participating in the negotiation/consultation mission with the Netherland Antilles government officials on behalf of the IMF. 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).

Pursuant to the above, the applicant must 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. Thus, the plain language of Section 13 does not reference specifically the country or countries in which the applicant holds citizenship, but rather references the country which accredited the applicant. The AAO acknowledges that the common definitions of terms such as diplomat, diplomatic and diplomacy are varied and broad, and that in practice diplomacy may encompass many responsibilities and duties. However, generally, a diplomat represents a country in its relations with other countries or international governing bodies. See *Vienna Convention*, Article 3; *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). Although the AAO recognizes the authority of the Vienna Convention, to which the United States is a signatory, the phrase "diplomatic and semi-diplomatic duties" as used in 8 C.F.R. § 245.3 must also be interpreted consistent with the language and intent of the regulation and Section 13.

The AAO observes that in this matter, although the applicant was admitted into the United States in G-2 status, the applicant was not accredited by her home country of Uganda or any other country to enter the United States and was employed as an economic "consultant" by the IMF from February 13, 1997 to March 20, 1998. The record does not establish that the applicant was an employee with representative duties or authority on behalf of any specific government. The record does not show that the applicant had any formal advisory or decision-making role on behalf of any specific country or that the applicant was involved in confidential communications or represented Uganda or any specific country in any capacity. As stated in the Vienna Convention, members of the diplomatic staff of a mission "should in principle be of the nationality of the section State." *Vienna Convention*, Art. 8. This further conforms to the general principle, as stated in Article 3 of the Vienna Convention, that a diplomat serves as a representative of the government that accredits the diplomat, and that a government will not generally entrust representation to non-citizens. Thus, in determining whether a particular duty is to be considered diplomatic or semi-diplomatic, the AAO considers whether the performance of the duty involves the representative authority of the accrediting government. In this matter, as noted above, the applicant has not demonstrated that, as a consultant for the IMF, she was entrusted with duties of a diplomatic or semi-diplomatic nature representing a specific government or governments. Accordingly, the AAO does not find that the applicant's duties were on behalf of a particular country that accredited her and that her duties were diplomatic or semi-diplomatic in nature for a specific country. The applicant in this matter must establish that there are compelling reasons why she or a member of her 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. To reiterate, the applicant has not established that a particular country accredited her to perform duties on its behalf and further that she is unable to return to that country for compelling reasons.

As the applicant has failed to demonstrate that she performed diplomatic or semi-diplomatic duties, for a country which accredited her and to which she is unable to return, it is unnecessary to determine if there are compelling reasons why the applicant or the applicant's immediate family is unable to return to Uganda, the country of her citizenship or that adjustment of the applicant's status to that of an alien lawfully admitted to permanent residence would be in the national interest.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. She has failed to establish that she was entrusted with duties of a diplomatic or semi-diplomatic nature. Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that 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.