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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

A3

DATE: Office: WASHINGTON DISTRICT FILE: [REDACTED]  
AUG 14 2012

IN RE: Applicant: [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:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Acting 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 Ethiopia 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)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

The acting field office director denied the Form I-485, Application to Register Permanent Residence or Adjust Status, on May 6, 2011. The acting field office director determined that the applicant had failed to demonstrate that compelling reasons prevent his return to Ethiopia. The acting field office director also noted that the Department of State issued its opinion on September 15, 2008, advising that it could not favorably recommend the applicant's adjustment of status to that of a lawful permanent resident.

On appeal, counsel and the applicant assert that the acting field office director erred in her decision. The applicant submits a statement and country condition information on Ethiopia 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.

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 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).

A review of the record establishes the applicant's eligibility for consideration under Section 13. The applicant obtained an A-1 status in March 1994. The applicant served as the head of the community affairs department within the consular section of the Ethiopian Embassy in Washington, D.C., from March 1994 until terminated on July 9, 2001. *Form DS-2008, Notice of Termination of Diplomatic, Consular, or Foreign Government Employment*. The applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status on January 17, 2002. Therefore, the AAO concurs with the acting field office director that, per the requirements of Section 13, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(G)(i) of the Act but no longer held that status at the time of his application for adjustment on January 17, 2002.

As a result, the only issue before the AAO is whether the record also establishes that compelling reasons prevent the applicant's return to Ethiopia and that his adjustment will serve U.S. national interests.

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

In a letter dated August 17, 2001, counsel claims that the compelling reasons why the applicant does not wish to return to Ethiopia is that his spouse is a citizen of Eritrea, a country that has been at war with Ethiopia since 1998, that it is unlikely that the applicant’s spouse will be issued a visa to visit or live in Ethiopia, and even if such visa was issued, she would not be welcome to live in Ethiopia.

In an April 17, 2002 personal statement, the applicant indicated his reasons for being unable to return to Ethiopia stem from the discrimination against him by Embassy officials on the suspicion that he is leaking information to his Eritrean friends because his spouse is an Eritrean. The applicant states,

Since the war started I was not included in the Embassies meetings either for information or decision – making. The management meeting is of course limited to few people, but the department head meetings should have been open to me as I was Consular Section Department head. My wife, . . . is an Eritrean. . . . I was suspected of leaking information to Eritrean Friends through my wife . . . and suspicions is one of the factors for my being isolated from major Embassy meeting.

The record contains two sworn statements by the applicant. In his statement dated April 17, 2002, the applicant stated that he believes that he will be persecuted if he returned to Ethiopia because his spouse, an Eritrean citizen will not be able to live in Ethiopia and his children, who are half Eritrean, will have difficulty adjusting to living in Ethiopia. In his May 3, 2005 statement, the applicant stated that he believes that he would be subjected to persecution if he returned to Ethiopia because

of his disagreement with the government in the 2005 voting and election process, and that his spouse would not be allowed to enter Ethiopia because she is a citizen of Eritrea.

On appeal, the applicant submitted a statement dated June 1, 2011. In that statement, the applicant provided explanation for the evidentiary deficiencies cited by the acting field office director in her decision of May 6, 2011. The applicant then restated his claim that he fears persecution by the Ethiopian government because of his disagreement with the election and the voting process. The applicant claims that opponents of the Ethiopian government have been persecuted in the past. The applicant reiterated his concern that his wife may not be allowed to enter and reside with him in Ethiopia because she is Eritrean.<sup>1</sup> The applicant claims that many Eritreans of Ethiopian nationality were deported to Eritrea and that he wrote letters on behalf of some of them to save them from deportation. The applicant also claims that despite his efforts to save his brother-in-law from deportation to Eritrea, his brother-in-law's wife and youngest daughter were deported to Eritrea. The applicant indicated that he will not subject his spouse and children to "such a social and psychological discrimination or mental torture." In support of these assertions, the applicant submitted copies of country condition reports on Ethiopia from 1999 through 2010.

The AAO has reviewed the applicant's statements, but finds them insufficient to establish that he and his family would be subjected to persecution as a result of his disagreement with the policies of the Ethiopian government and/ or because of his spouse's Eritrean citizenship. The applicant claims that he was excluded from important meetings on the suspicion that he leaked important information to his Eritrean friends, and that he was relieved of his duties at the Embassy because of his expression of disagreement with certain government policies. The applicant also claims that his spouse and children would not be allowed to enter or live in Ethiopia because of their Eritrean nationality. The applicant however, does not provide substantive evidence that he and his family would be subjected to harassment and discrimination from government officials because of his actions against the Ethiopian government or because of his spouse's Eritrean citizenship. The AAO notes the country condition reports submitted by the applicant in support of his assertions. However, we find that the country condition reports provide general country condition information on Ethiopia, but do not demonstrate that the applicant and his family would be specifically targeted for persecution. Accordingly, the applicant has failed to provide evidence that he and his family would be subjected to harassment and threats from government officials because of his actions in opposition to the Ethiopian government. 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)).

In addition, the AAO observes that dismissal from a position within a foreign government mission for disagreement with that foreign government's policies is not a compelling reason preventing an alien's return to the country that accredited him or her. Foreign governments necessarily expect that their employees support their policies in accredited positions in foreign posts. The applicant's disagreement with his government's position in the voting and the election process, while an exercise of a universal freedom, does not require that the Ethiopian government continue to employ

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<sup>1</sup> The record reflects that the applicant's spouse is a United States citizen.

him in a foreign mission, if he is not representing that government's policies. The AAO finds that the applicant's termination of employment at the Ethiopian Embassy does not substantiate that the applicant will be subject to harassment or life threatening actions upon returning to Ethiopia. In addition the applicant has not provided substantive evidence that his family would be targeted for discrimination or harassment because of his spouse's Eritrean nationality. Hardship in re-adapting to one's country is not a compelling reason 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 Ethiopia or other political entity there as required under Section 13. Accordingly, 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.

Although unnecessary to address as the applicant has failed to demonstrate that there are compelling reasons preventing his return to Ethiopia, the AAO briefly notes that the applicant has also failed to demonstrate his adjustment of status is in the national interest. The AAO notes the applicant's volunteer work within the Ethiopian community in the United States; 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. Thus, 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 Ethiopia, 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.