



U.S. Citizenship
and Immigration
Services

[Redacted]

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DATE: Office: NATIONAL BENEFITS CENTER File [Redacted]
DEC 04 2012

IN RE: Applicant: [Redacted]

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

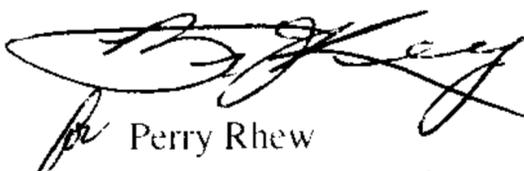
ON BEHALF OF PETITIONER:
[Redacted]

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 Director, National Benefits Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will remain denied.

The applicant is a native and citizen of Cameroon, 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 director denied the application for adjustment of status after determining that the applicant had not established that (1) compelling reasons prevent his return to Cameroon; and (2) that his adjustment is in the national interest of the United States. The director also determined that the applicant was maintaining diplomatic status at the time he filed for adjustment under Section 13. *Decision of Director*, dated August 24, 2012.

The applicant's dependents

, and each submitted an Application for Status as Permanent Resident (Form I-485) seeking to adjust status under Section 13. The director issued separate decisions denying these applications. These dependents each filed a separate Form I-290B, Notice of Appeal. The AAO will issue a separate decision for each of the dependents.¹

On appeal, counsel for the applicant asserts that the director's decision to deny the application was erroneous because the director failed to consider all relevant facts, misapplied and misinterpreted the applicable laws, statute, and regulations. Counsel contends that the applicant has established compelling reasons why he cannot return to Cameroon. Counsel requests an additional 270 days to submit his brief and or additional evidence in support of his contention that the applicant has compelling reasons that prevents him and his family from returning to Cameroon.²

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

¹ The record reflects that the application for dependent [redacted] was denied by the director on August 24, 2012, however, no I-290B was filed by this dependent. The AAO will not issue a decision for this dependent.

² As will be detailed in the decision, the AAO finds that the applicant is not eligible for adjustment of status under Section 13. Therefore, counsel's request for additional time to submit brief or additional evidence to establish compelling reasons why the applicant cannot return to Cameroon is denied.

Attorney General 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.

In addition, an applicant for adjustment of status under Section 13 must not be maintaining *diplomatic status in order to apply for adjustment under Section 13*; thus, his or her status must be terminated prior to the date on which the adjustment application is filed. Pursuant to 8 C.F.R. § 214.2(a), an alien admitted under section 101(a)(15)(A)(ii) of the Act maintains that status "for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status." Therefore, the authority to determine the date of termination of status under section 101(a)(15)(A)(ii) of the Act rests exclusively with the State Department.

Pursuant to 8 C.F.R. § 214.2(a), an alien admitted under section 101(a)(15)(A)(ii) or 101(a)(15)(G)(i) or (ii) of the Act maintains that status "for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status." Thus, the authority to determine the date of termination of status under section 101(a)(15)(A)(i) of the Act rests exclusively with the State Department. An application for adjustment of status under Section 13 filed while the applicant is maintaining diplomatic or semi-diplomatic status is properly denied. However, denial of the application on this ground does not preclude the applicant from filing a new application once the requirement for applying – failure to maintain status – has been met.

In this matter, the record reflects that the applicant was admitted in A-1 nonimmigrant status on December 18, 2006 and he served as a Defense Attaché for the Embassy of Cameroon in Washington, DC. The applicant remained in this position until July 1, 2011, when the United States Department of State was informed of his termination of employment with the Embassy of Cameroon. The applicant maintained legal status in the United States under section 101(a)(15)(A)(i) of the Act through July 1, 2011. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on March 8, 2009, two years before termination of his diplomatic status. Thus, when the applicant filed his Form I-485, on March 8, 2009, he was not eligible to apply for section 13 adjustment of status as he was still in diplomatic status. Accordingly, the AAO finds that the director properly determined that the applicant was not eligible to apply for adjustment of status pursuant to section 13 of the Act on March 8, 2009.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Based upon a *de novo* review of the record, the AAO determines that the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(i) of the Act, and that he was maintaining that status at the time of his application for adjustment on March 8, 2009. Accordingly, the applicant was not eligible to apply for adjustment under Section 13 at the time of the filing. As the applicant was not statutorily eligible to apply for adjustment of status under section 13 of the Act, the issues of whether the applicant has established compelling reasons that prevent his return to Cameroon and whether his adjustment is in the national interest of the United States will not be addressed.

Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. The applicant has failed to meet that burden.

ORDER: The appeal is dismissed. The application remains denied.