



U.S. Citizenship  
and Immigration  
Services

A3

[REDACTED]

DATE: OCT 02 2012 Office: NATIONAL BENEFITS CENTER

FILE: [REDACTED]

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:

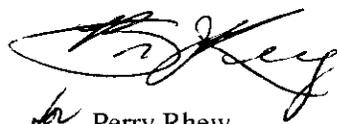
[REDACTED]

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,

  
for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, National Benefits Center (director). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of [REDACTED] who is seeking to adjust her status to that of a 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 director denied the Form I-485, Application to Register Permanent Residence or Adjust Status after determining that the applicant had failed to demonstrate that she held a diplomatic or semi-diplomatic position. The director also noted that the Department of State issued its opinion on May 21, 2010, recommending that the application be denied because the applicant never held diplomatic status and does not qualify for Section 13 adjustment of status. *Decision of the Director*, dated April 30, 2012.

On appeal, counsel states that the applicant was admitted to the United States in a G-2 nonimmigrant status, a diplomatic status, and that the director erred in concluding that the applicant did not perform diplomatic or semi-diplomatic duties. Counsel asserts that the applicant was granted a G-2 visa at the request of the Venezuelan government to provide expert advice to its representatives at a conference, that the applicant served as a representative of the government of Venezuela in a semi-diplomatic capacity and is thus eligible to adjust her status under Section 13.

The record includes, but is not limited to a brief from counsel; personal statement from the applicant, dated June 20, 2012; a copy of a sworn statement from the applicant, dated March 26, 2009, supportive statements from friends; and a copy of "[REDACTED] for the thirty-fifth ordinary period of sessions of the [REDACTED] from 27<sup>th</sup> to 30<sup>th</sup> of April, 2004. The entire record has been reviewed in rendering a decision on 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, 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).

A review of the record does not establish the applicant's eligibility for consideration under section 13. The record indicates that the applicant was admitted into the United States in a G-2 nonimmigrant status to attend a conference by the [REDACTED] in April 2004. Although the applicant was admitted in a G-2 status, the applicant never represented or served the government of [REDACTED] or any other government in an official capacity or as a member of that country's diplomatic corps. Thus, the applicant was never classified as a diplomat. At an interview before a USCIS officer on March 26, 2009, the applicant stated that she worked as a social worker for a religious organization in [REDACTED], that she never worked for the government of [REDACTED] and that she came to the United States in April 2004, for a meeting in [REDACTED] to "learn about ways to combat drugs in [REDACTED]" At the same interview, the applicant stated that she did not attend the conference in [REDACTED], as required by her visa, but that after she landed in [REDACTED] she changed planes and flew to [REDACTED] to reunite with her husband, who was living in [REDACTED] at the time.

On appeal, however, counsel claims that the applicant entered the United States in G-2 diplomatic status in order to perform semi-diplomatic work on drug abuse and narcotrafficking prevention efforts proposed at a conference by the [REDACTED]. Counsel asserts that because of the applicant's "recognized expertise in the area of combating narcotrafficking," the applicant was invited to provide information about the conditions in [REDACTED] slums and their relationship to efforts to control drug abuse and trafficking. Counsel states that the information provided by the applicant "would be used by the diplomatic representatives who were considering the adoption of several different international policies meant to control drug abuse and narcotrafficking throughout the Americas by the [REDACTED]." Counsel contends that the applicant represented the government of [REDACTED] at the conference and therefore performed semi-diplomatic duties.

Counsel's assertions on appeal are not supported by the record and are inconsistent with the duties the applicant testified she performed and her role at the [REDACTED] conference. Counsel provides no evidence in support of his assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. Although the term "diplomatic" is used in the Act to describe aliens admitted to the United States under section 101(a)(15)(A) of the Act, the language and intent of 8 C.F.R. § 245.3 is to exclude from consideration for adjustment of status under section 13 certain aliens admitted in "diplomatic" status and entitled to the rights and immunities afforded diplomats under international law. Both section 101(a)(15)(A) of the Act and the [REDACTED] recognize that certain accredited employees or officials admitted to serve within embassies or other diplomatic missions are not "diplomatic" staff. The [REDACTED] refers to such personnel as administrative and technical staff, service staff, or personal servants. *The [REDACTED]*, Art. 1 (April 18, 1961), 500 U.N.T.S. 95. Whereas ambassadors, public ministers, and career diplomatic or consular officers are admitted under section 101(a)(15)(A)(i) of the Act, those admitted under section 101(a)(15)(A)(ii) such as the applicant are described as "other officials and employees" accepted on the basis of reciprocity. These non-diplomatic employees are nevertheless afforded the rights and immunities of diplomatic staff. See [REDACTED]

The essential role of a diplomat is the representation of a country in its relations with other countries. See *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); *Black's Law Dictionary* (Diplomacy: The art and practice of conducting negotiations between national governments). The record in this case establishes that the applicant was granted a G-2 visa to attend a conference, not as a diplomat representing the government of [REDACTED]. The applicant testified in her own words that she never worked for the government of [REDACTED] and that she was invited to the conference as an observer, and not as an "expert" as claimed by counsel. The applicant did not have any representative duties or authority on behalf of the [REDACTED] government.

Counsel's claim that the applicant represented the ██████████ government at the ██████████ conference and that her duties are semi-diplomatic in nature is contrary to the applicant's statements on March 26, 2009 and June 20, 2012. In those statements, the applicant stated that she was invited to attend the conference in the United States for "observation and to learn." It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.* The record does not contain any evidence to substantiate counsel's claim that the applicant held a diplomatic status and that she represented the ██████████ government in a semi-diplomatic capacity. 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 record does not demonstrate that the applicant had any formal advisory or decision-making role or that she had authority to represent the government of ██████████ before any state or federal government agencies of the United States or other international organizations. Accordingly, the record in this matter is insufficient to demonstrate that the applicant was entrusted with duties of a diplomatic or semi-diplomatic nature.

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 performed diplomatic or semi-diplomatic duties. 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.