



U.S. Citizenship
and Immigration
Services

13

[REDACTED]

DATE: Office: NATIONAL BENEFITS CENTER FILE: [REDACTED]
OCT 19 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 Director (director), National Benefits Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Nigeria 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 the daughter of 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 failed to demonstrate that her father was an accredited diplomat and that he performed diplomatic or semi-diplomatic duties.¹ *Decision of the Director*, dated June 29, 2012.

On appeal, counsel contends that the director erred in finding that the applicant's father was never accredited as a diplomat. Counsel submitted documentation on appeal in support of his contention that the applicant's father was accredited by the United States Department of State as a diplomat and that he performed diplomatic or semi-diplomatic duties.

The record contains, among other documents, a letter from the Assistant Chief of Protocol, United States Department of State, Washington, D.C., dated March 2, 2000, accepting the applicant's father as a diplomatic agent of the Embassy of the Federal Republic of Nigeria, a copy of the applicant's father's Nigerian passport indicating his profession as Ambassador, a copy of a United States nonimmigrant A-1 visa issued to the applicant's father in [REDACTED] on November 4, 1999, a copy of a Form I-94, Arrival/Departure Record, showing that the applicant's father was admitted into the United States in 1999 as a nonimmigrant A-1 visitor, with authorization to remain in the United States for the duration of his status, a copy of the applicant's passport containing an A-1 nonimmigrant visa and a copy of a Form I-94, Arrival/Departure Record showing that the applicant was admitted into the United States on December 21, 1999, as a nonimmigrant A-1 visitor. 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 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 Attorney General that the alien has shown compelling reasons demonstrating

¹ The director did not make a determination as to whether the applicant presented compelling reasons why she cannot return to Nigeria and whether her adjustment of status will be in the national interest of the United States.

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 Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

8 U.S.C. § 1255(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 establishes the applicant's eligibility for consideration under Section 13. The applicant was admitted in A-1 nonimmigrant status on December 21, 1999, as a dependent of her father, [REDACTED] who served as Minister, Deputy Chief of Mission, for the Embassy of the Federal Republic of Nigeria in Washington, D.C. until October 24, 2003. See *Statement from Assistant Chief of Protocol, United States Department of State, Washington, D.C.*, dated March 2, 2000; see also *Form I-566, Interagency Record of Request*

The record shows that the applicant was admitted under section 101(a)(15)(A)(i) of the Act, and no longer maintained that status at the time of filing her Form I-485 application. The director found

that the applicant's father was not an accredited diplomat, that the applicant's father did not perform duties of a diplomatic or semi-diplomatic nature and denied the application on these grounds. The AAO does not concur. 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). In this case, the evidence of record demonstrates that the applicant's father served as a Minister, Deputy Chief of Mission for the Embassy of the Federal Republic of Nigeria in Washington, D.C., he was accepted and accredited as a diplomat by the U.S. Department of State, and he was accorded all diplomatic immunities. Thus, the evidence of record establishes that the applicant's father was a diplomat who performed diplomatic or semi-diplomatic duties for the Embassy of the Federal Republic of Nigeria in Washington, D.C.

The director denied the application on the ground that the U.S. Department of State recommended that the applicant's adjustment of status be denied because her father was never a diplomat, but the record shows otherwise. The record shows that on April 19, 2012, the U.S. Department of State recommended that the applicant's request for adjustment of status under Section 13 be denied because her father, (the principal alien) was not seeking Section 13 benefit and not because her father was not an accredited diplomat. *Form I-566, Interagency Record of Request*. Accordingly, the determination by the director that the applicant's father was never accredited as a principal diplomat and that he did not perform diplomatic or semi-diplomatic duties is withdrawn.

The AAO however, finds that the applicant is not eligible for adjustment under Section 13 because the applicant has failed to establish compelling reasons that prevent her return to Nigeria and that her adjustment of status will be in the best interest of the United States. As discussed above, 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 this case, the applicant has provided no evidence to demonstrate that she is unable to return to Nigeria due to political changes in Nigeria that render her stateless or homeless or places her at risk of harm at the hands of the government or other entities in Nigeria due to her father’s duties and responsibilities as a diplomat. At her adjustment of status interview on October 19, 2010, the applicant stated under oath that she would not be persecuted if she returned to Nigeria. The applicant stated that if allowed to remain in the United States, she would be able to complete her research and assist schools and students in the United States. The applicant added that the “Virtual Tutoring Agent” her research projects, when completed, “will not only benefit the education system but will also aid the United States economy by producing better workers.” In a statement submitted in support of her application, the applicant stated that she is a graduate student researcher at Bowie State University in Maryland and that she is working on developing a virtual animated instructional agent which will be used to disseminate information to students in an alternate manner and help give them a deeper understanding of the topics being taught. The applicant stated that her work will “provide some much needed reform to the education industry in America, in ways that so very few virtual agents can claim.” The applicant requested that she be given the opportunity to remain in the United States to “prove it.”

The AAO notes the applicant’s statements; however, the statements do not qualify as a compelling reason within the meaning of Section 13. While the applicant’s statement addresses the issue that allowing her to remain in the United States would be in the national interest of the United States, the applicant has failed to meet the threshold requirement of establishing compelling reasons that prevents her return to Nigeria. As such, the AAO concludes that the applicant has failed to meet her burden of proof in demonstrating that there are compelling reasons that prevent her return to Nigeria. As the applicant has failed to demonstrate that there are compelling reasons preventing her return to Nigeria, the question of whether adjustment of status would be in the national interest of the United States need not be addressed.

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 there are compelling reasons preventing her return to Nigeria. 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.