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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

DATE: **DEC 09 2013** Office: NATIONAL BENEFITS CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Permanent Resident Pursuant to Section 13 of the Immigration and Nationality Act of 1957, Pub. L. No. 85-316, 71 Stat. 642, as amended.

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron M. Rosenberg".

Ron M. Rosenberg
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 applicant is a citizen of Madagascar 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 amended, 95 Stat. 1611, 8 U.S.C. § 1255b, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The director denied the application for adjustment of status after determining that the applicant had filed the adjustment of status application while she was still maintaining diplomatic status and that the applicant had not established that compelling reasons prevent her return to Madagascar. The director also noted that on January 26, 2013, the U.S. Department of State issued its opinion recommending that the applicant's adjustment application be denied because the applicant presented no compelling reasons why she cannot return to Madagascar. *Decision of the Director*, dated March 19, 2013.

The director also denied the application of the applicant's spouse () and children (), who each submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) under Section 13 as dependent derivatives of the applicant. The director issued separate decisions denying these applications. The dependents have each submitted a Form I-290B, Notice of Appeal or Motion appealing the decision. The AAO will issue a separate decision for each of the dependents.

On April 22, 2013, counsel for the applicant submitted a Form I-290B, Notice of Appeal or Motion. Counsel asserts that the applicant has compelling reasons why she cannot return to her country. Counsel claims that the applicant was no longer in diplomatic status at the time she filed her application because the applicant's diplomatic status terminated on the day she retired as the () of the Permanent Mission on March 30, 2010. Counsel argues that although the applicant's employment with the mission continued until September 30, 2010 (six months after her alleged retirement), the applicant "ceased her diplomatic status on March 30, 2010 when she formally surrendered her books, records, desk, equipment, and her signatory powers to the () to the new (). Her time from March 30, 2010 to September 30, 2010 was not in diplomatic employment, but was rather that of a retired employee returning to their former company to assist the new person adjust to their new position and to make sure that the running of the financial affairs of the Mission continued smoothly through the transition of diplomatic officers."

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.

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)(G)(i) 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)(G)(i) 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 the present matter, the record reflects that the applicant was admitted in G-1 nonimmigrant status in February 1996, and thereafter served as the [redacted] for the Madagascar Permanent Mission to the United Nations in New York from 1997 until September 30, 2010, when her status was terminated by the U.S. Department of State. While the applicant claims that she "officially" retired on March 30,

2010, she continued her employment with the Mission until September 30, 2010. *Statement of* [REDACTED], submitted on appeal. The applicant's statement clearly shows that the applicant continued to work for the Madagascar Permanent Mission to the United Nations until September 30, 2010. Therefore, counsel's assertion on appeal that the applicant's diplomatic status terminated on March 30, 2010, is not supported by any objective evidence. As indicated above, the authority to determine the date of termination of diplomatic status under section 101(a)(15)(G)(i) of the Act rests exclusively with the State Department. Based on the evidence of record, the applicant maintained diplomatic status in the United States under section 101(a)(15)(G)(i) of the Act through September 10, 2010, when the status was terminated by the U.S. Department of State. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on June 16, 2010. Therefore, when the applicant filed her Form I-485 application on June 16, 2010, she was not eligible to apply for adjustment of status under Section 13 of the Act.

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 finds that the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(G)(i) of the Act, that the applicant was maintaining that status at the time of her application for adjustment on June 16, 2010, and that the applicant was therefore not eligible to apply for adjustment under Section 13 at the time of the filing. The AAO also 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 June 16, 2010.

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 her return to Madagascar and whether her adjustment status will serve 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 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.