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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 (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 his 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 amended, 95 Stat. 1611, 8 U.S.C. § 1255b, as a derivative dependent child of 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)(GA)(i).

The director denied the Form I-485, Application to Register Permanent Residence or Adjust Status after determining that the applicant's mother had filed her adjustment of status application while she was still maintaining diplomatic status and that the applicant's mother 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 adjustment of status application for the applicant's mother be denied because she had presented no compelling reasons why she cannot return to Madagascar. The director denied the applicant's adjustment of status application on the basis of his mother's ineligibility for benefits under Section 13. *Decision of the Director*, dated March 19, 2013.

In a separate decision, the AAO, upon a *de novo* review of the evidence,¹ dismissed the appeal of the applicant's mother on the grounds that she filed her adjustment of status application while she was still maintaining diplomatic status and was therefore ineligible for benefits under Section 13 of the Act. The AAO did not make a determination as to whether the applicant's mother had presented compelling reasons that preclude her return to Madagascar and whether her adjustment of status will serve U.S. national interest. As the applicant's eligibility for adjustment under Section 13 derives from the eligibility of his mother, and the applicant has not provided new facts or evidence separate from those claimed by his mother, the AAO finds that the applicant is also ineligible for adjustment of status.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment of status under Section 13 of the Act. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ 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).