



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: DEC 24 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: SELF-REPRESENTED

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 (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 Guatemala 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)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

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 compelling reasons prevent her return to Guatemala. The director also noted that the U.S. Department of State issued its opinion on February 9, 2013, recommending that the application be denied because the applicant did not provide compelling reasons that prevent her return to Guatemala. *Decision of the Director*, dated March 14, 2013.

On appeal, the applicant asserts that she has presented compelling reasons why she cannot return to Guatemala. The applicant submits an additional statement, which she considers compelling, as to why she cannot safely return to Guatemala. The applicant also submits a one-page fact sheet on “Femicide” and “Feminicide” published by the Guatemalan Human Rights Commission/USA in support of the appeal.<sup>1</sup>

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO’s assessment of the credibility, relevance and probative value of the evidence.<sup>2</sup>

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

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<sup>1</sup> Femicide is the murder of a woman because of her gender. Feminicide is a political term that encompasses more than femicide because it holds responsible not only the male perpetrator but also the state and judicial structures that reinforce misogyny.

<sup>2</sup>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).

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.

A review of the record establishes the applicant's eligibility for consideration under section 13 of the 1957 Act. The applicant was admitted to the United States on June 11, 2011, in an A-1 nonimmigrant status and thereafter served as [REDACTED] in Houston, Texas. The record reflects that the applicant performed duties that were supportive of the Consulate General's diplomatic duties until August 15, 2012, when her status was terminated by the U.S. Department of State. Accordingly, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(i) of the Act but no longer held that status at the time she filed her application for adjustment on August 16, 2012.

The issues before the AAO in the present matter are therefore, whether the record establishes that the applicant has compelling reasons that preclude her return to Guatemala and that her adjustment of status would serve U.S. national interests – requirements set forth in section 13(b) of the 1957 Act.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

Upon a *de novo* review of the record, the AAO concurs with the director's determination that the applicant failed to establish that compelling reasons prevent her return to Guatemala. 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.

The record contains a personal statement dated August 10, 2012, which the applicant submitted in support of her application. In that statement, the applicant stated that as part of her duties and responsibilities, she interviewed and issued travel documents to Guatemalans awaiting deportation from the United States. The applicant indicated that some of the people she interviewed were convicted felons. The applicant indicated that these criminals perceived her as helping the United States to deport them as opposed to helping them to remain in the United States. She fears that these criminal will harm her if she returned to Guatemala. The applicant also claimed that she was unfairly removed from her position by the current government of Guatemala because she was appointed by the previous regime.

At her adjustment of status interview on November 28, 2012, the applicant indicated the following as compelling reasons that prevent her return to Guatemala.

“Mainly, in Guatemala there is a lot of femicide and I interviewed thousands of criminals, bad criminal record, that were sent back and for political reasons I was let go at work. Guatemala has a really high level of femicide and a poor police and protection system; I interviewed thousands of people that were deported back to

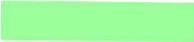
Guatemala, most of them with criminal records, and I may have political harassment.”

On appeal, the applicant reiterates the same facts she presented in her previous statements as compelling reasons that prevent her return to Guatemala. In addition, the applicant claims that in August 2012, her family in Guatemala received anonymous telephone threats from unknown individuals threatening to harm them as well as the applicant if she returns to Guatemala. The applicant declares, “my family had suffered persecution and have been leaving (sic) with fear and trying to live with extra precautions fearing for their security having to change phone numbers and even moving to different house...” The applicant states that she did not report the incident(s) to the police or the authorities because she fears that the information provided to the police “can affect my family” as “we could not determine where the threatening is coming from.”

The AAO has reviewed the applicant’s statements, and the information from the Guatemala Human Rights Commission on Femicide and Feminicide. The applicant states that women are at risk in Guatemala and that the authorities are not doing enough to protect them. However, the record in this matter does not present any specific evidence that the applicant would be at greater risk of harm due to political changes in the country 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.

The AAO notes that the applicant has not submitted evidence showing that she is at greater risk of harm because of her past government employment, political activities or other related reasons. The applicant has submitted no evidence demonstrating that she would be targeted for murder because of the duties she performed at the [REDACTED] Texas. The record in this matter does not present any evidence that demonstrate specific threats against the applicant and her family because of her past government employment that shows compellingly that she is unable to return to Guatemala. 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 applicant claims on appeal that in August 2012, her family received anonymous threatening phone calls and that they were forced to “live with fear” and adopt “extra precautions fearing for their security.” The applicant also claims that she was terminated from her position at the [REDACTED] because of the current government’s association of her with the previous government. The record however does not contain credible evidence to substantiate the applicant’s claims. As indicated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, id.* The AAO acknowledges the applicant’s desire to remain in the United States. However, the evidence of record does not show that the applicant is unable to return to Guatemala because of any action or inaction on the part of the government of Guatemala or other political entity there as required under Section 13. It is also noted that the U.S. Department of State has recommended that the applicant’s adjustment of status be denied because the applicant has



Accordingly, 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 Guatemala. As the applicant has failed to demonstrate that there are compelling reasons preventing her return to Guatemala, the question of whether her adjustment of status would be in the U.S. national interest 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 that prevent her return to Guatemala. Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he or 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.