



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **FEB 01 2013** 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:

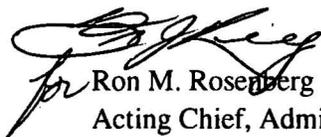
[Redacted]

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,


Ron M. Rosenberg

Acting 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 native and citizen of Egypt 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 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, on October 17, 2012. The director determined that the applicant had failed to demonstrate that compelling reasons prevent her return to Egypt. The director also noted that the Department of State issued its opinion on September 13, 2012, recommending that the applicant's request for adjustment of status to that of a lawful permanent resident be denied because the applicant had provided no compelling reasons why she cannot return to Egypt.

On appeal, counsel asserts that the applicant's adjustment of status application has been pending since 2003 and that during that time, "Egypt has changed considerably and the family at the same, the family has established firm roots in the US" and that "USCIS should be looking at the time the family has been lawfully in the US in consideration of the compelling reasons for granting the applications for adjustment of status." Counsel then requests that the applicant be granted a new interview to demonstrate the hardship to her family and the compelling reasons to permit the application to be granted. Counsel does not submit any new evidence or documentation with 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, United States 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 granted A-1 nonimmigrant status on June 11, 1998 to work for the Consulate General of Egypt in [REDACTED]. The applicant served as the [REDACTED] for the Consulate General from June 1998 until her term ended in April 2002. The U.S. Department of State was notified of the applicant's termination of duties on March 1, 2003. The applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status on June 13, 2003. Therefore, the AAO concurs with the director that, per the requirements of Section 13, 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 of her application for adjustment on June 13, 2003.

As a result, the only issue before the AAO is whether the record also establishes that compelling reasons prevent the applicant's return to Egypt and whether her adjustment will be in the national interest of the United States.

Upon review of the record, the AAO also concurs with the director's determination that the applicant has failed to establish compelling reasons that prevent her return to Egypt. 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 only evidence proffered by the applicant in support of her adjustment application are sworn statements she made before immigration officers in Chicago, Illinois on March 30, 2006 and March 18, 2010.

In her March 30, 2006 statement, the applicant stated that she does not want to return to Egypt because she wants her children to complete their education in the United States. She also stated that it would be hard for her children to go back to Egypt after living most of their lives in the United States. The applicant further stated that she and her family have lived in the United States for a very long time, that they feel as if they are “part American,” that there are better opportunities and a better life for her children here in the United States and it will be very hard for her children to go back to Egypt. In her March 18, 2010 statement, the applicant reiterated that the reason she wants to remain in the United States is because she wants to have her family all together in one place.¹

On appeal, the applicant does not submit additional evidence in support of her application.

¹ The AAO notes that at the time of the interview in March 2010, the applicant was serving as a [REDACTED], a diplomatic duty, for the Egyptian Consulate [REDACTED] a position she assumed right after her tour of duty in [REDACTED] ended in April 2002. It is unclear from the record the applicant’s current employment status.

While the AAO acknowledges that the applicant's children may face some difficulties adjusting to conditions in Egypt after a prolonged period of absence from that country, we note however, that the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. As referenced 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. The general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13.

In this case, the applicant has failed to demonstrate that she and her family will be targeted by the Egyptian government as a result of her duties at the Egyptian Consulate General in [REDACTED]. While counsel claims on appeal that "Egypt has changed considerably" since the applicant and her family left the country, counsel does not articulate what changes he was referring to or how the changes will affect the applicant and her family. Counsel does not articulate or provide evidence to demonstrate that the applicant and her family would be targeted by the government of Egypt upon their return to the country based on the applicant's service for the Consulate General of Egypt in the United States. On the contrary, the applicant testified under oath that she continued to serve the Egyptian government in a diplomatic capacity in [REDACTED] after her tour of duty ended in the United States. 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).

We also note that the U.S. State Department has recommended that the applicant's adjustment of status be denied because the applicant has presented no compelling reasons why she is unable to return to Egypt. See *Interagency Record of Request* (Form I-566), dated September 13, 2012. The evidence does not establish that the applicant is unable to return because of any action or inaction on the part of the government of Egypt or other political entity there as required under Section 13. The applicant has submitted no evidence showing that she is at greater risk of harm because of her past government employment, political activities or other related reason.

Based on the evidence of record, 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 Egypt. The applicant has failed to demonstrate that the government of Egypt will not allow her return to that country or that her past employment as [REDACTED] the Consulate General of Egypt in [REDACTED] places her and her family in danger and renders them unable to return to Egypt. Accordingly, the applicant has failed to demonstrate that she or any member of her immediate

family have compelling reasons as contemplated under Section 13 that prevent them from returning to Egypt. As the applicant has failed to demonstrate that there are compelling reasons preventing her return to Egypt, 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 Egypt. 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.