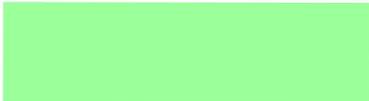
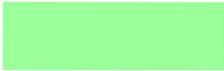




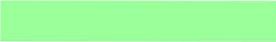
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: Office: NATIONAL BENEFITS CENTER FILE: 

FEB 13 2013

IN RE: Applicant: 

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: SELF-REPRESENTED

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 (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 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 modified, 95 Stat. 1611, 8 U.S.C. § 1255b, as the immediate relative 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 compelling reasons precludes her return to Madagascar. The director also noted that the U.S. Department of State issued its opinion recommending that the applicant's request for adjustment of status be denied because she has presented no compelling reasons why she is unable to return to Madagascar. *Decision of the Director*, dated September 26, 2012.

On appeal, the applicant asserts that she is unable to return to her country because "my family would face political corruption and unrest." The applicant indicated that her father served as a [REDACTED] under the regime of [REDACTED] who was replaced in a coup d'état in 2009 by a transitional government called the [REDACTED]. The applicant claims that her father was "stripped" of his diplomatic duties by [REDACTED] and that her father is in great risk of harm because of his perceived ties to [REDACTED].

In support of her application and the appeal, the applicant submitted a copy of her Madagascar passport containing an A-I nonimmigrant United States visa and Form I-94, Arrival/Departure Record indicating that the applicant was admitted into the United States in A-1 status on July 12, 2009 with authorization to remain in the United States for the duration of her status, and copies of country condition information on Madagascar. 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 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 July 12, 2009, as the immediate relative of a former diplomat, her father, [REDACTED] who served as the [REDACTED] for the [REDACTED] in [REDACTED] from September 14, 1995 until terminated on December 3, 2010. The U.S. Department of State was notified of the termination of the applicant's father's diplomatic duty on December 3, 2010. See *Form I-566, Interagency Record of Request*

The applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status on June 3, 2011. 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 as a dependent of his father but no longer held that status at the time of her application for adjustment on June 3, 2011.

As a result, the only issue before the AAO is whether the record also establishes that compelling reasons prevent the applicant's return to Madagascar and whether her adjustment will serve U.S. national interests.

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 Madagascar. 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 Madagascar due to political changes in the country that render her stateless or homeless or at risk of harm at the hands of the government or other entities in Madagascar due to her father's duties and responsibilities as a [REDACTED]. On October 13, 2011, the applicant completed a Sworn Statement before an Immigration Services Officer. In that statement, the applicant declared under oath that the compelling reason that precludes her return to Madagascar is that she will not be able to adjust if she goes back because there has not been a democratic election and the country is not moving forward. The applicant indicated at the interview that she wishes to continue her education in the United States and get a masters and PhD so that she can teach or become a

private investigator. On appeal however, the applicant claims that her father was “stripped” of his [REDACTED] duties after the Ravalomanana government that appointed him was overthrown in a coup d’état. The applicant claims that her father’s employment as a [REDACTED] during the Ravalomanana’s administration puts him in a greater risk of harm because it appears that her father has ties to the Ravalomanana government. The applicant does not provide documentary evidence to demonstrate that she would be at risk of harm because of her father’s [REDACTED] duties at the [REDACTED]

The AAO notes the applicant’s statement, however, the evidence does not establish that the applicant has established compelling reasons within the meaning of Section 13 that prevents her return to Madagascar. The AAO also notes the country condition information in the record and acknowledges the political problems in Madagascar, however, the applicant has provided no substantive evidence that she would be a target or that she would be at greater risk of harm because of her father’s past [REDACTED]. 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 has failed to meet the threshold requirement of establishing compelling reasons that prevents her return to Madagascar. While the applicant states that she wants to remain in the United States to continue her education and that she would not be able to adjust to life in Madagascar after having lived outside the country for a long time, such reasons do not qualify as compelling reasons for a Section 13 relief.

The AAO acknowledges that the applicant may experience hardships in relocating to Madagascar at this time. However, general inconveniences and hardships associated with relocating to another country and the desire to remain in the United States are not compelling reasons 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 not presented compelling reasons that prevent her return to Madagascar. *See* Interagency Record of Request (Form I-566), dated April 28, 2011. The AAO therefore concludes that the applicant has failed to meet her burden of proof in demonstrating that there are compelling reasons that prevent her return to Madagascar. As the applicant has failed to demonstrate that there are compelling reasons preventing her return to Madagascar, 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 Madagascar. 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.