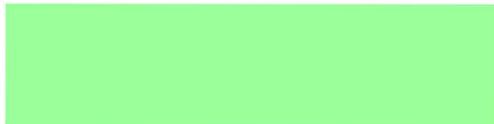


(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

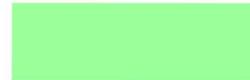


U.S. Citizenship  
and Immigration  
Services



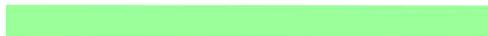
DATE: Office: NATIONAL BENEFITS CENTER

FILE:



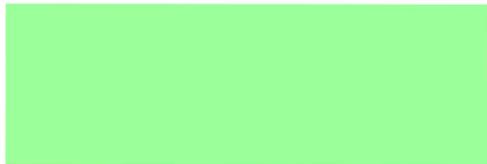
**JUL 16 2013**

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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 the 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  
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 citizen of Nigeria 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 derivative child of an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(G) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G).

The director denied the application for adjustment of status after determining that the applicant's father [REDACTED] who served as the Third Secretary at the Permanent Mission of Nigeria to the United Nations in New York from [REDACTED] was not employed in a diplomatic or semi-diplomatic position and the applicant had presented no compelling reasons that prevent her return to Nigeria. The director also noted that the U.S. Department of State had recommended that the applicant's adjustment of status application be denied because the applicant never had a qualifying status. *Decision of Director*, dated January 15, 2013.

On appeal, counsel for the applicant asserts that the applicant's father was determined by the Department of State to be an accredited diplomat and that the director's decision is inconsistent with that determination.

The record contains, among other documents, a copy of the publication "1986 Permanent Missions to the United Nations, No. 258," listing the applicant's father, ([REDACTED]) as the Third Secretary for Nigeria and a copy of a letter dated [REDACTED] from United States Department of State, New York Region, denying a United States passport for the applicant because at the time of the applicant's birth in New York, her father was an accredited representative of Nigeria to the United Nations. The entire record has been reviewed in rendering a decision on the appeal.

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>1</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.

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<sup>1</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).

(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, 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 does not establish the applicant's eligibility for consideration under Section 13. A letter from the United States Department of State, dated [REDACTED] indicates that the applicant was born in New York on [REDACTED] while her father was serving as an accredited staff member of the Nigerian Mission to the United Nations. The letter does not indicate the type of visa the applicant's father had at the time and the record does not contain a copy of the applicant's father's passport indicating his visa category. The record indicates that applicant last entered the United States on December 20, 2005, on a B-2 nonimmigrant visitor's visa. As stated

above, the record shows that the applicant had made prior trips to the United States on a B-2 nonimmigrant visa. The record further indicates that the applicant's father served as the Third Secretary to the Nigerian Mission to the United Nations in New York City,<sup>2</sup> but does not demonstrate that he performed diplomatic or semi-diplomatic duties at the time.

Counsel's claim on appeal that since the applicant's father was an accredited diplomat, his duties must have been diplomatic or semi-diplomatic in nature thereby rendering the applicant, a qualified derivative of her father eligible for adjustment under Section 13. The AAO disagrees.

To be eligible for consideration under Section 13, an alien must demonstrate that he or she was admitted into the United States under sections 101(a)(15)(A)(i), (A)(ii), G(i) or G(ii) of the Act and performed diplomatic or semi-diplomatic duties. The terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. Although the term "diplomatic" is used in the Act to describe aliens admitted to the United States under section 101(a)(15)(A) of the Act, the language and intent of 8 C.F.R. § 245.3 is to exclude from consideration for adjustment of status under section 13 certain aliens admitted in "diplomatic" status and entitled to the rights and immunities afforded diplomats under international law. Both section 101(a)(15)(A) of the Act and the Vienna Convention recognize that certain accredited employees or officials admitted to serve within embassies or other diplomatic missions are not "diplomatic" staff. The Vienna Convention refers to such personnel as administrative and technical staff, service staff, or personal servants. *The Vienna Convention on Diplomatic Relations*, Art. 1 (April 18, 1961), 500 U.N.T.S. 95. Whereas ambassadors, public ministers, and career diplomatic or consular officers are admitted under section 101(a)(15)(A)(i) of the Act, those admitted under section 101(a)(15)(A)(ii) such as the applicant are described as "other officials and employees" accepted on the basis of reciprocity. These non-diplomatic employees are nevertheless afforded the rights and immunities of diplomatic staff. See *Vienna Convention, supra*, Art. 37.

The essential role of a diplomat is the representation of a country in its relations with other countries. See *American Heritage Dictionary of the English Language, 4th Edition, 2000* (Diplomat: One, such as an ambassador, who has been appointed to represent a government in its relations with other governments); *Black's Law Dictionary* (Diplomacy: The art and practice of conducting negotiations between national governments). In this case, the record does not establish that the applicant's father performed diplomatic or semi-diplomatic duties as opposed to administrative or technical duties. The applicant stated that she never obtained an A or G visa. Although the record shows that the applicant's father served as the Third Secretary at the Nigerian Mission to the United Nations, it does not establish that the applicant's father had any representative duties or authority on behalf of the Nigerian government. The applicant claims that her father performed diplomatic duties, yet she indicated in her sworn statement of October 19, 2011, that she is unaware of the duties performed by her father when he worked for the Nigerian Mission to the United Nations. 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)).

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<sup>2</sup> See a copy of the United Nation's identity card for the applicant's father. See also a letter from the applicant's father, dated December 30, 2010.

The applicant stated that she never obtained an A or G visa and that her father currently holds the position of [REDACTED] at the Nigerian High Commission in London. Consequently, the AAO finds that the applicant has failed to establish that she has a qualifying status and that she is eligible to adjust status under Section 13 of the Act.

The AAO also concurs with the director's determination that the applicant has failed to establish compelling reasons that prevent her return to Nigeria. The applicant has stated no compelling reasons that prevent her return to Nigeria. 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. In response to the question by an immigration officer to state what compelling reasons prevent her return to Nigeria, the applicant stated "No reasons." On appeal, counsel does not address the issue of compelling reasons that prevent the applicant from returning to Nigeria. Accordingly, the applicant has failed to establish that compelling reasons prevent her return to Nigeria as required under Section 13 of the Act.

For all the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. She has failed to establish that she had a qualifying status, that her father was admitted into the United States as a diplomat and that he performed diplomatic or semi-diplomatic duties. Also, the applicant failed to present compelling reasons that preclude her return to Nigeria. 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.