



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: JUN 21 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: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 sustained.

The applicant is a native and citizen of El Salvador who is seeking to adjust his 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 application for adjustment of status after determining that the applicant had failed to demonstrate compelling reasons that prevent his return to El Salvador. The director also noted that the U.S. Department of State issued its opinion on August 30, 2012 recommending that the applicant's request for adjustment of status be denied because the applicant presented no compelling reasons why he is unable to return to El Salvador.

On appeal, the applicant submits a detailed letter stating reasons which he considers compelling that prevent his return to El Salvador and country condition information on El Salvador in support of the appeal. The applicant asserts that he was not given the opportunity to submit updated supporting evidence after his adjustment interview. The AAO conducts appellate review on a *de novo* basis. The AAO will consider all evidence in the record including evidence submitted on appeal in reaching a decision on this case.<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.

(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

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<sup>1</sup> 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).

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 into the United States in August 1997 in an A-1 nonimmigrant status as the ambassador and principal diplomatic representative of El Salvador in the United States and served as El Salvador's ambassador to the United States until May 2009 when he resigned from his position. *Record of Sworn Statement by* [REDACTED] dated October 28, 2009. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on August 4, 2009. Therefore, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(i) of the Act but no longer held that status at the time of his application for adjustment of status on August 4, 2009.

The issues before the AAO in the present case are, therefore, whether the record establishes that the applicant has compelling reasons that precluded his return to El Salvador and that his 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).

At his adjustment interview on October 28, 2009, the applicant submitted a sworn statement indicating that he traveled to El Salvador on May 31, 2009, to resign his position at the Embassy of El Salvador in the United States because of political problems in El Salvador and then returned to the United States. In response to the question of what compelling reasons prevent his return to El Salvador, the applicant stated that he has been subjected to political harassment; accused of accepting huge compensation for resigning and was supposed to have been investigated by the Ministry of Foreign Affairs; and that he has been accused of "promoting deportation." The applicant stated that it is not possible for him to return to El Salvador because he would be politically harassed, would be "boycotted in El Salvador" and he would be destroyed politically and discredited. The applicant also cited national security as a reason why he cannot return to El Salvador. As an example, the applicant stated that his father passed away in August 2009 but that he did not travel to El Salvador for his funeral due to security reasons. *Record of Sworn Statement by* [REDACTED] dated October 28, 2009.

On appeal, the applicant submits a letter detailing threats to him and his family by unknown individuals and political harassment by certain individuals within the administration of the current government of El Salvador. The applicant detailed his concerns for his safety and the safety of his family in El Salvador due to threats from unknown criminals and gangs, which he believes led to the death of his father from a sudden heart attack. The applicant states, "I always thought that the death of my father was a natural consequence of his relatively advanced age; I never thought that external factors had played a role in his unexpected passing. I was told months later that the reason my father had suffered a sudden heart attack was because he had been receiving death threats from unknown people. Those threats were received by phone and anonymous notes at home with similar messages directing my father to give away a very large amount of money to unknown individuals in exchange for our immediate family lives (extortion). Those threats had been consistent for five months before his sudden death." The applicant also states that the threats to his family have continued because his wife recently received an electronic mail originating in El Salvador with specific information about her whereabouts, specific reference of her being his wife and directing her to send money to a bank account of an unknown person otherwise her relatives – sisters, nieces and nephews – in El Salvador would be killed or harmed.

The applicant believes that these anonymous threats from unknown criminals and gang members in El Salvador are directed to him and his family because of some of his actions while serving as the Ambassador of El Salvador in the United States. The applicant declares:

It was widely known that I was the architect of a series of agreements with the U.S. government, including the signature of Memorandums of Understandings for the expedite deportation of Salvadoran criminals and gang members. I also publicly supported the establishment of the FBI anti-gang task force in our country, and was directly involved in the return to the United States of some Salvadoran criminals sought by the United States Justice Department, and some States. . . . Moreover, I traveled to El Salvador with at least two congressional delegations . . . to address their concern regarding expedited deportation of Salvadoran Nationals with criminal backgrounds. This information is public and also was widely reported by Salvadoran media.

The applicant further states that he was the subject of threats whenever he visited El Salvador while serving as the ambassador but was provided adequate security because of his position, but that he no longer enjoys the benefits and protection accorded to an ambassador or a minister and that his presence in El Salvador would attract the interest of criminals and gang members rendering him and his family vulnerable to their retaliation attacks. The applicant believes that the current government would not do enough to secure his protection and that of his family.

The applicant also detailed his concern for political retaliation because of his active role in the last presidential electoral campaign in opposition to the current government of El Salvador. The applicant states that he headed the team that prepared the proposed government plan for the ARENA party, which gave him wide exposure in the media. The applicant indicates that he was engaged in "constant debates with the representatives of the opposition; debates that warranted me many threats because my political

arguments were always irrefutable and supported by facts,” and that his opponent’s inability to refute his findings, “gained me their hatred and derision.” The applicant fears that the source of extortions and threats to him and his family could also be politically motivated.

The applicant also states that he publically supported United States Senator [REDACTED] and Senator [REDACTED] plans to deal with the recent Constitutional crisis in El Salvador, and that some of the president’s circle of friends comprised of former guerrilla members are pursuing ways to seek revenge for his support of the U.S. Senators’ position. The applicant also cited family unity – his desire to remain in the United States with his lawful permanent resident spouse and his two children as an additional reason he does not want to return to El Salvador.

In support of the application and the appeal, the applicant submitted country condition information on El Salvador related to the constitutional crisis in El Salvador between the National Assembly and the Supreme Court and security crisis in the country related to the problems of crime and violence caused in part, by drug trafficking, corruption, and a proliferation of illicit firearms, coupled with high levels of poverty, inequality, and unemployment in El Salvador; on-line news article on MS-13 gangs; and supportive letters from the Chief Operating Officer, [REDACTED] Washington, D.C., U.S. Congressman [REDACTED] Principal, [REDACTED] Washington, D.C.

Based on the applicant’s position and duties as the former ambassador of El Salvador in the United States, the applicant’s detailed statements regarding specific threats to him and his family, country condition information on El Salvador highlighting the lack of security in the country and the government’s inability and/or unwillingness to protect the applicant and his family, and supportive statements on behalf of the applicant’s adjustment application, the AAO finds the applicant has submitted sufficient proof to demonstrate compelling reasons why he is unable to return to El Salvador.

In his decision to deny the application the director noted that the U.S. Department of State issued its opinion on August 30, 2012 recommending that the applicant’s request for adjustment of status be denied because the applicant presented no compelling reasons why he is unable to return to El Salvador. The AAO finds that the U.S. Department of State’s opinion is a recommendation and not binding on the AAO’s *de novo* authority to review a case. Additionally, the AAO finds that the evidence submitted by the applicant on appeal is sufficient to overcome the U.S. Department of State’s recommendation. Accordingly, the AAO finds the record sufficient to demonstrate that compelling reasons prevent the applicant from returning to El Salvador.

With regard to the second prong of section 13(b) of the 1957 Act, which requires the adjustment of the alien to serve the national interest, the AAO finds the record to establish that the applicant’s adjustment would be in the U.S. national interest. As the El Salvador ambassador to the United States, the applicant handled many important and sensitive matters of mutual interest for El Salvador and the United States including: immigration status for Salvadorans, deportation agreements, extradition and mutual legal issues, reconstruction and development assistance, military cooperation, drug trafficking combat measures, and negotiations of free trade agreements with the United States. The record demonstrates that the applicant’s efforts helped to strengthen the relationship between the United States

and El Salvador. Currently, the applicant has applied his academic and professional experience in working as a consultant with [REDACTED] to provide professional and technical services to the company in its projects with U.S. Agency for International Development (USAID). Some of the projects the applicant worked on behalf of the USAID are: the design of a strategy plan in Peru for the eradication of coca plantations; the Central America Security Initiative to prevent the increase of violence in the region; Afghanistan Work Force Development Program; and Yemen Community Livelihoods Program. All these projects serve the national interest of the United States. Accordingly, the applicant has demonstrated that the U.S. national interest would be served by his adjustment to lawful permanent resident status under section 13 of the 1957 Act.

For the reasons just discussed, the AAO finds the applicant to have established that there are compelling reasons preventing his return to El Salvador and that his adjustment will benefit the U.S. national interest. Accordingly, the appeal will be sustained.

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 met that burden.

**ORDER:** The appeal is sustained.