



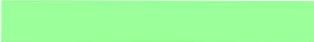
U.S. Citizenship
and Immigration
Services

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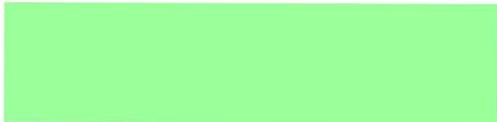
DATE: Office: NATIONAL BENEFITS CENTER FILE: 

MAR 28 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 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The appeal will remain dismissed and the application will remain denied.

The applicant is a native and citizen of [REDACTED] who is seeking to adjust his 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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(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 his and his family's return to [REDACTED]. The director also noted that the U.S. Department of State issued its opinion on June 23, 2011, recommending that the applicant's adjustment of status be denied because the applicant has failed to provide compelling reasons why he does not want to return to [REDACTED]. *Decision of the Director*, dated June 11, 2012. In its October 5, 2012 decision, the AAO determined that the applicant was not eligible for Section 13 benefits because the applicant failed to demonstrate that his position and his duties as a personal officer/secretary at the [REDACTED] were diplomatic or semi-diplomatic in nature, that there are compelling reasons that prevents his return to [REDACTED] and that his adjustment of status was in the national interest of the United States. The AAO dismissed the appeal accordingly.

Upon review of the applicant's duties, as set out by his testimony and other evidence in the record, the AAO found that the applicant was performing clerical or administrative duties and not diplomatic or semi-diplomatic duties. The applicant indicated in a sworn statement before immigration officers on May 4, 2006 and August 5, 2008, that his duties at the mission entailed taking dictations, typing speeches and drafting letters as well as keeping track of appointments for the Ambassador and organizing the Ambassador's files. The AAO noted a January 5, 1998 statement from [REDACTED] acknowledging the applicant's employment as personal officer (secretary). The AAO found that the record did not support a claim that the applicant had any formal advisory or decision-making roles at the Mission or that he represented [REDACTED] before any foreign government in an official capacity.

On motion, counsel asserts that the applicant was assigned to the [REDACTED], that the applicant was specifically assigned as the Personal [REDACTED] a sensitive position, working closely with the Ambassador in his diplomatic duties, and that the applicant was involved with other diplomats in their dealings with other countries, in connection with the [REDACTED] mission. In his October 26, 2012 statement in support of this motion, the applicant stated that he worked closely with the [REDACTED] Ambassador as his assistant, that he had a formal advisory decision making role at the [REDACTED]; and that he represented [REDACTED] before the United States and other foreign governments with the Ambassador. The applicant claimed that although he served as the Ambassador's personal assistant, that he was also "directly

involved with diplomatic duties and performed duties in direct support and furtherance of such activities.”

The applicant does not submit any documentation in support of his and counsel’s assertions on motion that he assisted the Ambassador with the Ambassador’s diplomatic duties. 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)). A review of the statements provided on motion further confirms that the applicant performed clerical/administrative duties while employed at the [REDACTED]

[REDACTED] The record on motion does not demonstrate that the applicant’s duties differed from his designation as secretary who assisted in taking notes, drafting letters, keeping track of the Ambassador’s schedule and organizing the Ambassador’s files. The record does not establish the applicant performed diplomatic or semi-diplomatic duties and accordingly he is not eligible for consideration for the benefit under Section 13.

Upon review of the applicant’s testimony and other evidence in the record, the AAO previously determined that the applicant had not provided probative evidence that he is unable to return to [REDACTED] because of any action or inaction on the part of the government of [REDACTED] or other political entity and that he had not demonstrated that he is at greater risk of harm because of his past government employment, political activities or other related reason. A review of the evidence previously submitted confirms that the applicant did not provide probative detailed statements regarding specific incidents of threats or harassment against him or his family.

On motion, counsel asserts that the applicant was a lifelong member of the [REDACTED] that his employment in the [REDACTED] as well as in the [REDACTED] were influenced by his party affiliation and that when his term ended in 1998, a different party, which was hostile to the applicant and his party, [REDACTED], was in power and denied the applicant further employment. Counsel also asserts that the current government in [REDACTED] is persecuting political opponents and that the applicant fears that he and his family would be targeted because of his [REDACTED] affiliation. Counsel claims that the applicant’s fear is consistent with what happened to fellow [REDACTED] citizens who opposed the current government and its policies and others, similarly situated to the applicant, who returned to the country after serving in diplomatic assignments under [REDACTED] government.

In his October 26, 2012 statement in support of this motion, the applicant indicates that he was a lifelong member of the [REDACTED], that he was appointed to his position at the [REDACTED] because of his party affiliation and that he was terminated from that position because of his [REDACTED] affiliation when a new government came to power. The applicant states that [REDACTED] is currently in power, that [REDACTED] is their main political opponent and that the government is in a “violent political struggle with its opponents, using all the undemocratic measures and using all national security resources.” The applicant also states that the government is intensifying political persecution against members of [REDACTED] and that he knows some of his colleagues who were persecuted after they returned to [REDACTED] and are now looking for ways to flee the country. The applicant further claims, “my life and liberty will be in jeopardy if I were to

return to [REDACTED] because Government Security Forces have checked my whereabouts in [REDACTED] and made threats to our extended family member.”

In support of these assertions, the applicant submitted various country condition reports and newspaper articles on political and human rights conditions in [REDACTED]. The AAO notes the country condition reports submitted on motion, however, the additional information does not establish that the applicant and his family would be subjected to persecution because of his affiliation with [REDACTED] or because of his duties at his country's [REDACTED]. It is also noted that the applicant's prior statements did not mention his political affiliation with [REDACTED] as one of the reasons why he cannot return to [REDACTED]. The AAO acknowledges the political and human rights abuses in [REDACTED] as reported in the country condition reports and the newspaper articles. However, the applicant has provided no probative evidence to substantiate his claim that the government of [REDACTED] will persecute him based on his [REDACTED] affiliation if he returned to [REDACTED]. The information submitted on motion does not establish that the applicant's position was terminated as a result of and in retaliation to his affiliation with [REDACTED]. On the contrary, the applicant stated under oath on August 5, 2008, that his position in New York was terminated because “my term was limited to 6 years and my term was up.” It is further noted that U.S. Department of State has recommended that the applicant's adjustment of status be denied because the applicant has presented no compelling reasons why he is unable to return to [REDACTED]. See *Interagency Record of Request* (Form I-566), dated June 13, 2011.

The applicant has not provided credible and probative evidence demonstrating that he is at greater risk of harm from the [REDACTED] government due to any political changes in [REDACTED] 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 or would be at risk of harm because of his political activities. 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 [REDACTED] or other political entity there as required under Section 13. The applicant has submitted no evidence showing that he is at greater risk of harm because of his past government employment, political activities or other related reason. Thus, the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to [REDACTED] as required under Section 13. Accordingly, the AAO's previous decision remains undisturbed.

As the applicant has failed to establish that he performed diplomatic or semi-diplomatic duties, and failed to demonstrate that there are compelling reasons preventing his return to [REDACTED], the question of whether his adjustment of status would be in the national interest need not be addressed.

The eligibility for relief pursuant to Section 13 is limited and ineligibility for Section 13 relief does not preclude the applicant from pursuing other benefits provided under the immigration laws of the United States. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

ORDER: The previous decision of the AAO, dated October 5, 2012, is affirmed. The application remains denied.