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



U.S. Citizenship
and Immigration
Services

DATE: **MAY 09 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 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,

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, National Benefits Center (director). 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 Mexico 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)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

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 return to Mexico. The director also noted that the Department of State issued its opinion on December 15, 2012, recommending that the application be denied because the applicant did not provide compelling reasons preventing his return to his country. *Decision of the Director*, dated January 15, 2013.

On appeal, the applicant asserts that he was terminated by the [redacted] in Houston because he refused to "perform illegal acts," he filed an [redacted] complaint against the [redacted] due to work accidents at the consulate, and because he [redacted] the [redacted]. The applicant claims that he was fired as a result and that he could not maintain his A-2 status. The applicant claimed these as compelling reasons why he and his family cannot return to Mexico.

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.¹

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

¹The 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).

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 notes that Section 13 requires only that an applicant demonstrate that there are "compelling reasons demonstrating . . . that the alien is unable to return to the *country represented by the government which accredited the alien* . . ." (emphasis added). The record reflects that the applicant is a native and citizen of Mexico and was accredited by the government of Mexico as an employee of the [redacted] in Houston, Texas. See *Notification of Appointment from [redacted] Washington, DC., to the U.S. Department of State*, dated October 29, 2002. The record further reflects that the applicant was admitted to the United States in A-2 status on January 28, 2002 and served thereafter as a "Clerk" at the [redacted] in Houston, Texas [redacted] December 31, 2010. See *Sworn Statement of [redacted]* dated October 24, 2011. The record does not establish the applicant's eligibility for consideration under Section 13. Consequently, the director's decision to [redacted] the applicant's adjustment application on the basis that he failed to demonstrate compelling reasons preventing his return Mexico was [redacted].

Upon a *de novo* review of the record, the AAO finds that the applicant has not shown that he performed diplomatic or semi-diplomatic duties as required by 8 C.F.R. § 245.3. As noted above, the applicant was admitted into the United States as a clerk for the [redacted] in Houston, Texas and the applicant has not demonstrated that he performed diplomatic or semi-diplomatic duties as required by 8 C.F.R. § 245.3. At his adjustment interview on October 24, 2011 the

applicant stated that his official title at the [REDACTED] was Clerk. He described his duties as: [REDACTED] [REDACTED] The applicant stated that he never had diplomatic status and the record shows that the applicant was not recognized as a diplomat and was not accorded diplomatic immunity by the U.S. Department of State. The applicant submitted a letter from U.S. Department of State signed by the assistant [REDACTED] indicating that the applicant "has been accepted as an employee" at the [REDACTED] in Houston, Texas, in the position of Clerk. Nonetheless, the applicant stated that he believes that the duties he described were semi-diplomatic in nature.

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). The record in this case establishes that the applicant was granted an A-2 visa and thereafter served as a clerk at the [REDACTED] in Houston, Texas. The applicant stated at his adjustment interview that his duties were to issue [REDACTED] [REDACTED] The applicant stated that he never had a diplomatic status. This is evidenced by the letter of acceptance of the applicant by the U.S. Department of State as an employee of [REDACTED] *See Notification of Appointment from Embassy of Mexico, Washington, DC., to the U.S. Department of State*, dated October 29, 2002. Therefore the applicant's claim that his duties as a clerk were semi-diplomatic in nature is not substantiated by any other evidence.

Although the record shows that the applicant was admitted under section 101(a)(15)(A)(ii) of the Act, he has provided no evidence to demonstrate that he served the Mexican government in a semi-diplomatic capacity. The AAO notes that the duties as described by the applicant are technical or administrative in nature. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Saffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record does not demonstrate that the applicant had any

formal advisory or decision-making role or that he had authority to represent the government of Mexico before any state or federal government agencies of the United States or other international organizations. Accordingly, the record in this matter is insufficient to demonstrate that the applicant was entrusted with duties of a diplomatic or semi-diplomatic nature.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. He has failed to establish that he performed diplomatic or semi-diplomatic duties. 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 failed to meet that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.