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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

[Redacted]

DATE: **MAY 29 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:
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

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 (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 El Salvador 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)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(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 return to El Salvador. The director also noted that the Department of State issued its opinion on December 26, 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 9, 2013.

The director also denied the application of the applicant’s spouse [REDACTED] and the applicant’s son [REDACTED] his daughter [REDACTED] and his daughter [REDACTED] who each submitted an Application for Status as Permanent Resident (Form I-485) seeking to adjust status under Section 13 as dependents of the applicant. The director issued separate decisions denying these applications. These dependents each filed a separate Form I-290B, Notice of Appeal. The AAO will issue a separate decision for each of the dependents.

On appeal, counsel for the applicant asserts that the applicant and his family “have indeed compelling reasons that make them unable to return to El Salvador because of inaction and lack of control from the government of El Salvador, other than ‘general inconveniences and hardships associated with relocating to another country and the desire to remain in the United States.’ ” Counsel submits a brief and copies of various country condition reports and information on El Salvador in support of the appeal. *See Form I-290B, Notice of Appeal or Motion*, dated February 4, 2013.

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

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).

[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 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 to the United States on August 25, 1999, in an A-1 nonimmigrant status to work as a [REDACTED] at the Consulate General of El Salvador in Coral Gables, Florida. The applicant performed duties of a semi-diplomatic nature for the Consulate General of El Salvador until February 1, 2012. In February 2012, the Embassy of El Salvador notified the U.S. Department of State of the applicant's termination of duties. Accordingly, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(i) of the Act but no longer held that status at the time he filed his application for adjustment on February 7, 2012.

The issues before the AAO in the present matter are whether the record establishes that the applicant has compelling reasons that preclude 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.

Upon a *de novo* review of the record, the AAO concurs with the director's determination that the applicant failed to establish compelling reasons that prevent his return to El Salvador. 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.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

In a July 30, 2012, interview with a USCIS officer in Miami, Florida, the applicant executed a Sworn Statement. In that statement, the applicant indicated the following as compelling reasons that prevent his return to El Salvador:

As a [REDACTED] I have personally dealt with thousands of deportations of El Salvador nationals who have committed crimes in the United States. I have received verbal threats made by those criminals [REDACTED] when I aided the United States with their deportations. I know that retaliation by the [REDACTED] is something my family and I would have to confront when we return to El Salvador to live permanently.

On appeal, counsel in essence repeats the same reasons provided by the applicant to a USCIS officer on July 30, 2012 as the compelling reasons that prevent him from returning to El Salvador. In his brief submitted on appeal, counsel asserts that as vice consul, the applicant was the person in charge of providing deportees the documents to travel back to El Salvador and interviewing them. Counsel claims that as a result, the applicant has received numerous verbal threats from these "deportees" because he helped the United States with their deportation to El Salvador. Counsel also claims that the applicant has been affiliated with the political party, [REDACTED] for a very long time, that the applicant's family was threatened and that his wife was a crime victim in San Salvador in 1999 due to the applicant's political activities, which prompted the head of [REDACTED] to offer the applicant the position of vice consul at the Coral Gables Consulate General of El Salvador in order to protect him and his family. Counsel indicates that in 2009, the applicant's political rival, [REDACTED] won the presidential election. He contends that political retaliation is very strong in El Salvador and that being appointed vice consul by the previous [REDACTED] government would "render it impossible for [the applicant] to find a job in El Salvador."

In support of his assertions and the appeal, counsel submits copies of various country condition reports on El Salvador, copies of newspaper articles and copies of online news articles about El Salvador. Also, the record contains some copies of letters from U.S. Immigration and Customs Enforcement (USICE) in Atlanta, Georgia and Miami, Florida, addressed to the applicant requesting the issuance of travel documents for citizens of El Salvador under deportation orders from the United States.

The AAO has reviewed the applicant's statements, counsel's brief on appeal and the country condition information submitted. The AAO acknowledges that country conditions in El Salvador show a country that is marred by gang violence, kidnapping for ransom and other insecurity caused in part by the gang violence, other criminal elements, and poverty in the country. The AAO also acknowledges that the reports show that the government of El Salvador is making efforts to curb the violence and insecurity in the country and to restore the country to some normalcy. The AAO further acknowledges the applicant's fear of returning to El Salvador due to the violence and insecurity in the country and his apprehension that he and his family may be targeted as they are returning from the United States after a prolonged absence from the country. However, the record in this matter does not present any specific evidence that the applicant would be targeted due to political changes in the country 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. The AAO notes that the applicant has not submitted evidence showing that he is at greater risk of harm because of his past government employment, political activities or other related reasons. The letters in the record from USICE do not indicate that the travel documents that USICE requested from the applicant's office for the deportation of Salvadoran citizens under a final order of deportation from the United States were primarily for deportation of MARAS gang members. Thus the applicant's claim that he would be targeted and harmed by MARAS members because he helped the United States government to deport them is not substantiated by the record. The record in this matter does not present any evidence that demonstrates specific threats against the applicant and his family because of his past government employment that shows compellingly that he is unable to return to El Salvador. 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)).

Counsel asserts on appeal that it would be “impossible for the applicant to find a job in El Salvador” because of his affiliation with the [REDACTED] party. However, the applicant’s ability or inability to obtain work in El Salvador is not substantiated in the record. The applicant has not demonstrated that any inability to obtain work would be due to actions or inactions on the part of the government of El Salvador or any other political entity there. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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 presented no compelling reasons that prevent his return to El Salvador. *See* Interagency Record of Request (Form I-566). Accordingly, the AAO concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to El Salvador. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to El Salvador, the question of whether his adjustment of status would be in the U.S. national interest need not be addressed.

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 there are compelling reasons preventing his return to El Salvador and that his continued residence in the United States is in the national interest. Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he or 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.