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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

DATE: Office: NATIONAL BENEFITS CENTER FILE:

NOV 04 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 current 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
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 Application to Register Permanent Residence or Adjust Status, Form I-485, after determining that the applicant had failed to demonstrate that compelling reasons prevent his return to El Salvador. Decision of the Director, dated March 5, 2013.

The director also denied the Application to Register Permanent Residence or Adjust Status, Form I-485, of the applicant's spouse, [REDACTED] who submitted an application seeking to adjust status under Section 13 as a derivative dependent of the applicant. The director issued a separate decision denying her application. The applicant's spouse submitted a timely appeal. The AAO will issue a separate decision for the applicant's spouse.

On appeal, counsel for the applicant asserts that the applicant served as [REDACTED] for ten years, and in his position, the applicant provided travel documents for the deportation of El Salvador citizens, including criminals, from the United States. The applicant fears that these criminal deportees will harm him and his family if he returns to El Salvador. Counsel also states that the applicant "is a long-term member of the [REDACTED] active in its political campaigns and elections" and now "his political rival, the [REDACTED] has taken power." In addition, counsel states that the applicant's wife is part-owner of a family coffee plantation where in recent months two persons were murdered. According to counsel, the applicant is afraid that he and/or his wife could be attacked and possibly killed by the same persons who committed these murders. Counsel submits a brief and additional documents in support of 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.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.

The applicant entered the United States on December 1, 2009 in an A-1 nonimmigrant status and served as [REDACTED]. The director stated that the U.S. Department of State indicates that the applicant's status was terminated on February 9, 2010. The applicant filed the Form I-485 application on February 12, 2010. As the applicant no longer held A-1 nonimmigrant status at the time he filed his application for adjustment of status, he has established eligibility for consideration under section 13 of the 1957 Act.

On appeal, counsel states that one of the applicant's principal duties as [REDACTED] was to interview Salvadorans who had been issued deportation orders from the United States, including criminals and gang members who hold the applicant "personally responsible for their deportations as the public representative of the Salvadoran government." He states that these gang members and criminals and their family members "have issued verbal threats, including death threats" to the applicant. He further states that the "[REDACTED] gangs in general, and criminal aliens have created an atmosphere of fear and violence in El Salvador, including a disturbing number of murders."

Counsel provides a copy of a letter from Mr. [REDACTED] and contends that Mr. [REDACTED] "clearly stated that [the applicant]" was offered protection

from [REDACTED] because he had received many threats from the [REDACTED] [which are] very dangerous organizations, with criminal records inside and outside the United States.”

In his March 5, 2013 decision, the director, noted the U.S. Department of State’s recommendation that the application be denied, because the applicant failed to provide compelling reasons why he cannot return to El Salvador.

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).

The AAO has reviewed the applicant's statements, counsel's assertions as well as the country condition information in the record. The AAO acknowledges that country conditions in El Salvador show a country that is marred by gang violence, kidnapping for ransom and other insecurities caused in part by the members of the gangs operating with impunity in the country, other criminal elements, and poverty in the country. The AAO also acknowledges that the reports show that the government is taking steps to address the security concerns in the country and that there have been some political changes in favor of the [REDACTED] – the applicant's party. For example, the applicant states that the [REDACTED] has taken power over El Salvador through a congressional delegation and the presidency of the country. In November 2011, the president replaced his [REDACTED] minister of public security with a retired general and former defense minister, and the minister and the new [REDACTED] director, also a retired general, have removed most officers affiliated with the [REDACTED] from leadership positions. And in the March 2012 municipal elections, the [REDACTED] party captured 117 of 262 mayoralties, including the capital San Salvador, and eight departments while the current president's [REDACTED] party won only three departments.

The AAO also 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 is insufficient to establish 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 substantive and probative evidence demonstrating that he is at greater risk of harm because of his past government employment, political activities or other related reasons. The record contains no substantive and probative evidence that shows compellingly that he is unable to return to El Salvador and that supports the applicant's claim that he and his family had been and continue to be threatened by members of the [REDACTED] because of his past government employment. Furthermore, there is no evidence that the applicant or his wife are at greater risk of harm because of his wife's part-ownership of a coffee plantation in El Salvador.

Counsel's assertions that the applicant and his family have been targeted by criminals and members of gangs for his diplomatic work in the United States have not been substantiated by the record. 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). 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)).

The AAO further acknowledges the difficulty the applicant's family may encounter in returning to El Salvador after spending some time in the United States. However, the general inconveniences and hardships associated with relocating to another country and the desire to remain in the United States so that the family may experience a better life are not compelling reasons under Section 13. The applicant has not provided substantive evidence that his family would be at greater risk of harm because of his past government employment. The evidence of record does not show that the applicant and his family are unable to return to El Salvador because of any action or inaction on the part of the government of El Salvador or other political entity there as required under Section 13. 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. 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.