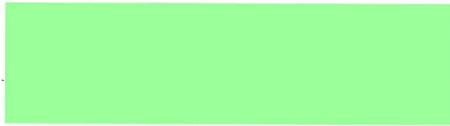




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: Office: NATIONAL BENEFITS CENTER
NOV 06 2013

FILE:

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.

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,

Ron M. Rosenberg
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 dismissed.

The applicant is a native and citizen of Nepal 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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(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 Nepal. The director also noted that the U.S. Department of State issued its opinion on February 9, 2013 recommending that the applicant's request for adjustment of status in the United States be denied because the applicant presented no compelling reasons that prevent his return to Nepal. See *Director's Decision*, dated March 8, 2013.

On April 5, 2013, counsel for the applicant submitted a Form I-290B, Notice of Appeal or Motion asserting that the director did not address the "substantial amounts of evidence that was submitted by the applicant in support of his I-485 application." Counsel contends that the evidence of record is sufficient to establish compelling reasons why the applicant cannot return to Nepal. Counsel submits a letter brief and country condition information on Nepal that had been previously submitted in the record in support of the appeal.

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 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 and 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 legislative history of Section 13, including the 1981 amendment adding the term "compelling reasons," 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.

What Section 13 requires 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. The AAO finds that a review of the totality of the Section 13 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.

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 on March 20, 1998, in a G-1 nonimmigrant status and served as [REDACTED] until his term ended in August 1998. The U.S. Department of State, Office of Foreign Missions issued a Notice of Termination of the applicant's status on August 30, 1998. The applicant indicated his official title as [REDACTED] and that his duties included, but were not limited to, promoting Nepal's

interest at the United Nations, formulating policy for Nepal at the [REDACTED] and supervising a staff of 10 at the [REDACTED]. See *Record of Sworn Statement of Pradumna Thapa*, dated June 12, 2012. 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)(ii) of the Act but no longer held that status at the time he filed the application for adjustment of status on November 12, 2010.

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

In the various statements the applicant submitted in support of his adjustment application, the applicant indicated that he cannot return to Nepal because he fears that the Maoist rebels would kill him. The applicant stated that he comes from a family of political activists and that his uncle was a former Prime Minister of Nepal. The applicant claimed that as a result of his family's political involvement and criticism of the Maoist rebel, his family home was destroyed by the rebels and his cousin killed by them. The applicant also claimed that as the second secretary of [REDACTED] he continued his political advocacy against the Maoist rebels and that he was instrumental in blocking the World Bank's release of a significant amount of money to the Nepalese government, that was controlled by the rebels at the time, as part of the peace fund to Nepal. The applicant further claimed that he cannot return to Nepal because the rebels are aware of his activism against them and would kill him.

On appeal, counsel for the applicant asserts that the applicant's family has been persecuted for many decades by the Maoist because of their political activism against the Maoist and that the applicant's life would be at risk if he returned to Nepal. Counsel claims that the applicant worked as the [REDACTED] where "he has voiced his concerns about the Maoist's violations of the norms of democracy and human rights to the UN and US government. As such, due to his belief, family ties, and activities, the applicant is unable to return to Nepal for fear of persecution by the Maoist." In support of the appeal, counsel submits copies of country condition reports of Nepal for 2007 to 2009, and copies of email exchanges between the applicant and some of his colleagues dated in 2008, 2009 and 2010, letters and other articles regarding the political situation in Nepal during the period 2007 to 2009.

The AAO has reviewed the applicant's statements, counsel's brief on appeal, country condition information submitted by the applicant as well as other documents the applicant submitted in support of his application and find them insufficient to establish compelling reasons that preclude the applicant from returning to Nepal. We note that contrary to counsel's assertions on appeal, the record does not contain evidence demonstrating the applicant's opposition to the Maoist rebels during his term as the [REDACTED] from March 1998 to August 1998, when his term ended. 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).

Current country condition information on Nepal reports that the landmark peace agreement between the Nepalese government and the Maoist rebels signed in November 2006, ended the rebels' 10-year insurgency that claimed some 12,000 lives and in 2007, the Maoist joined the interim government of Nepal. Although the fragile compromise government fell apart in May 2009, when the country's Maoist Prime Minister resigned, a new agreement was reached in June 2010 with the Maoists in which the Prime Minister agreed to resign in exchange for the Maoist extending the term of Parliament and the deadline to complete a draft constitution, thereby averting a political crisis. These reports are clear evidence that the Maoists are trying to be part of the government of Nepal and contradict the applicant's claim that he would be targeted and killed by the Maoist as a result of his and his family's political activism against the Maoists. It is noted that the landmark peace agreement in November 2006, the efforts of the Nepalese government in implementing the Comprehensive Peace Accord, including the integration and rehabilitation of former Maoist combatants, and the U.S. Department of State's revocation of the designation of the Communist Party of Nepal (Maoist) and its aliases as a Specially Designated Global Terrorist entity and a Terrorist organization from its Terrorist Exclusion List in 2012, demonstrates that the Maoists rebels have given up their insurgency tactics and embraced democracy and peaceful transfer of power. The applicant has failed to demonstrate that individuals who had opposed the Maoist ideology are currently being targeted by the Maoist rebels. The record does not contain substantive evidence demonstrating that the applicant is at greater risk of harm at this time because of his past government employment, political activities or other related reasons. The applicant has not established that he is a target of the government of Nepal or other entities there that the Nepalese government is unwilling or unable to control.

The evidence of record does not show that the applicant is unable to return because of any action or inaction on the part of the government of Nepal or other political entity there as required under Section 13. The AAO finds that in this matter the applicant has not established compelling reasons that relate to political changes now in effect 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 does not find that the applicant's circumstances demonstrate that he is unable to return to Nepal. The applicant has failed to meet his burden of proof in this regard. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Nepal, the question of whether his adjustment of status would be in the national interest need not be addressed.

The eligibility for relief under 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. Accordingly, the AAO finds that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to Nepal for the purposes of Section 13.¹ As the applicant has failed to demonstrate that there are compelling reasons preventing his

¹ It is also noted that the U.S. Department of State has recommended that the applicant's request for adjustment of status be denied because the applicant has presented no compelling reasons why he

return to Nepal, 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 that preclude his return to Nepal. 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.