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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: **NOV 06 2013** Office: NATIONAL BENEFITS CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Permanent Resident Pursuant to Section 13 of the Immigration and Nationality Act of 1957, Pub. L. No. 85-316, 71 Stat. 642, as amended.

ON BEHALF OF APPLICANT:
[REDACTED]

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,

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. 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 Saudi Arabia who is seeking to adjust her 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 amended, 95 Stat. 1611, 8 U.S.C. § 1255b, as a derivative dependent spouse of 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 application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent her return to Saudi Arabia. The director also noted that the U.S. Department of State issued its opinion on January 26, 2013 recommending that the applicant's request for adjustment of status in the United States be denied because the applicant had presented no compelling circumstances that prevent her return to Saudi Arabia. *See Decision of the Director*, dated February 20, 2013.

The director also denied the application of the applicant's children [REDACTED] who each submitted an Application to Register Permanent Residence or Adjust Status, (Form I-485) under Section 13 as derivative dependent children of their father, [REDACTED] 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 issued a separate decision for each of the dependents denying their application. The dependents did not file a Form I-290B, Notice of Appeal or motion appealing the director's decision. The AAO will not issue any decision for the dependents.¹

On appeal, counsel for the applicant asserts that the director erred in denying the application because the applicant submitted "a comprehensive and detailed affidavit showing that she would suffer serious abuse at the hands of her husband, who was expelled from the United States as a diplomat as a result of sexually abusing one of the maids in their household, after [the applicant] called the police." Counsel also asserts that the applicant's affidavit "makes it clear that not only has she suffered at the hands of the government of Saudi Arabia in the past, but now, as a result of her 'humiliating' and 'shaming' her husband by refusing to return to Saudi Arabia with him and by keeping their children here as well, she will face horrific abuse and the patriarchal government of Saudi Arabia will do nothing whatsoever to protect her." Counsel contends these factors are compelling reasons why the applicant is unable to return to Saudi Arabia. *See Form I-290B, Notice of Appeal or Motion*, dated March 21, 2013; *see also, Brief in Appeal of Denial of Section 13 Application for Adjustment of Status*.

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:

¹ For each adverse decision, an applicant must submit a separate Form I-290B and associated fee. *See* 8 C.F.R. § 103.3(a)(1). The applicant bears the burden of completing the Form I-290B accurately and according to its instructions. *See* 8 C.F.R. § 103.2(a)(1).

(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.

The issues before the AAO in the present case are, therefore, whether the record establishes that the applicant has compelling reasons that preclude her return to Saudi Arabia and that her adjustment of status would serve U.S. national interests – requirements set forth in section 13(b) of the 1957 Act.

A review of the record shows that the applicant last entered the United States on December 30, 2009, in an A-2 nonimmigrant status as the immediate relative of a former diplomat, her husband, [REDACTED] who served as an [REDACTED] from 2009 until his status was terminated on January 11, 2011. Although the applicant was unable to provide any details of her husband’s duties and responsibilities as a Saudi Diplomat when asked to do so at her Adjustment of Status interview on December 15, 2011, a review of the record reflects that the applicant’s spouse was admitted to the United States in a diplomatic status and thereafter served the [REDACTED] until his status was terminated on January 11, 2011. Therefore, as a derivative dependent family member of her spouse, the applicant is eligible to apply for benefits under Section 13 of the Act. The applicant filed her adjustment of status application on August 8, 2011. As per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in a diplomatic status under section 101(a)(15)(A)(ii) of the Act but no longer held that status at the time of her application for adjustment of status on August 8, 2008.

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).

The applicant provided the following background information as the compelling reasons why she cannot return to Saudi Arabia. In her initial Sworn Statement of August 4, 2011, the applicant indicated that she wants to remain in the United States with her three children and not return to Saudi Arabia because she will “face serious consequences from the patriarchy that rules that country.” The applicant indicated that prior to her marriage to her husband who is her second cousin, she was physically, emotionally, and sexually abused by her own family in Saudi Arabia and that she married the applicant in order to escape the abuse by her family. After her marriage, her spouse began to physically and emotionally abuse her. She had no one to turn to and so she had to bear the abuse alone, which she

indicated took a big toll on her. The applicant stated that the abuse by her husband continued when they moved to the United States and the Saudi Embassy did not provide any assistance to her when she turned to them for help. The applicant indicated that she not only had to endure her husband's abuses, she had to also contend with his infidelity. The applicant stated that on several occasions, her spouse would abandon her and her children for days without adequately providing for their wellbeing to be with his girlfriends. The applicant indicated that on at least two occasions, her husband attempted to sexually assault her nannies in her own home. The first time the attempt to assault occurred, her nanny confronted her husband and he backed off. The applicant stated that when the incident was brought to her attention, she confronted her husband and threatened to call the police if he tried it again. In December 2010, her husband once again attempted to rape one of her nannies and she called the local police and reported the incident. Her husband was arrested, but because of his diplomatic status, the Saudi Embassy was contacted and they sent him back to Saudi Arabia rather than face criminal charges in the United States. The applicant stated that her husband was very upset with her and threatened to kill her either in the United States or in Saudi Arabia. The applicant indicated that a few days after her husband left the United States, she received random threats from unknown individuals, people knocked on her door many times at night, a minivan was parked in front of her house and drove off when she opened the door, and she received many crank calls.

The applicant believes that her husband will carry out the threat to kill her if she returns to Saudi Arabia or her own family may kill her because of her actions against her husband and the fact that she has remained in the United States with her children while her husband is in Saudi Arabia. The applicant also wants to remain in the United States so that her son, [REDACTED] who has serious medical problems can continue to receive medical care and specialized attention in the United States, and that her two daughters can complete their education in the United States and live a normal life, free from the constraints she had to contend with growing up in Saudi Arabia. The applicant believes that one of her daughters may have been physically or sexually molested by her husband as she is having some emotional problems.

On appeal, counsel for the applicant asserts that the applicant fears serious harm in Saudi Arabia as a result of her actions in setting in motion the events that led to her husband's expulsion from the United States by his own Embassy rather than face charges in the United States. Counsel also asserts that the applicant is worried about her son, who has Sanjad-Sakati Syndrome and needs 24 hour medical companionship, as well as her two daughters, who are in high school, one of whom may also have been abused sexually and/or physically by the applicant's spouse. Counsel claims that if the applicant returned to Saudi Arabia under these circumstances, it would "be a disaster." Counsel states that while this case may be an unusual application for Section 13 of the Act, "it is clear that the reasons [the applicant] cannot return to Saudi Arabia have very much to do with the inability and disinclination of the government of Saudi Arabia to protect her from her husband if she returns to that country." Counsel contends that the applicant merits a grant of relief under Section 13 of the Act because one of the reasons the applicant cannot return to Saudi Arabia is because the government of Saudi Arabia cannot and will not protect her, as a woman who has allegedly "shamed" her husband, who was a diplomat for many years in the United States prior to being expelled. In support of the appeal, the applicant submits a copy of United States Department of State Country Report on Human Rights Practices for Saudi Arabia for 2011.

The AAO notes that the applicant and counsel on appeal have provided three areas of concern that they assert show “compellingly” that the applicant is unable to return to Saudi Arabia. These three areas of concern relate to: the applicant’s son’s medical condition; the security and overall wellbeing of her children and the consequences she may face in Saudi Arabia for reporting her husband’s crime to local police resulting in his expulsion from the [REDACTED]. The AAO has reviewed the applicant’s statements, counsel’s brief on appeal and country condition information submitted on appeal and find them insufficient to establish compelling reasons within the requirements of Section 13 as to why the applicant cannot return to Saudi Arabia.

Regarding the applicant’s son’s medical condition, the applicant and counsel indicated that the applicant’s son, [REDACTED] age 23, suffers from a genetic disorder called Sanjad-Sakati Syndrome and has been receiving medical treatment in the United States. The record contains photographs of [REDACTED] and medical reports from the various physicians that have been treating [REDACTED]. The reports are conclusive evidence that [REDACTED] has a very complex and chronic medical condition that requires a team of healthcare professionals to care for him, and according to his pediatrician, Dr. [REDACTED] transporting [REDACTED] by plane or moving him out of the country “places this delightful young man’s life at great risk, unnecessary risk.” While we acknowledge that the applicant’s return to Saudi Arabia could place [REDACTED] at great risk of harm, we note that, as referenced above, 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. As such, [REDACTED] severe medical condition is not a compelling reason as required under Section 13 that prevents the applicant from returning to Saudi Arabia.

The AAO notes the U.S. Department of State Country Report on Saudi Arabia reports that women continue to face significant discrimination under the law and custom, that women have few political or social rights, that society treats them as unequal members, and that the guardianship system requires that every woman have a close male relative as her “guardian” with the authority to approve her travel. However, the purpose of Section 13 is to offer protection to those individuals who are unable to return to the State that accredited them due to changes in that State government and because they would be targeted for their past specific role in working for that State. In this case, the applicant has provided no credible evidence to establish that she is at greater risk of harm because of her spouse’s past government employment, political activities, or other related reason. We recognize that the applicant may have problems with her spouse if she returns to Saudi Arabia, 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 Saudi Arabia or other political entity there as required under Section 13. It is also noted that the U.S. Department of State has recommended that the applicant’s adjustment application be denied because

she has presented no compelling reasons that prevent her return to Saudi Arabia. See Interagency Record of Request (Form I-566).

We acknowledge the applicant's desire to remain in the United States so that her children will complete their education, provide them with better opportunities and that her son continue to receive the specialized care he needs. However, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The applicant has provided no credible evidence to establish that she and her family are at greater risk of harm due to political changes in Saudi Arabia that render diplomats "stateless or homeless" or at risk of harm following upheaval in that country.

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. The applicant in this case has failed to present compelling reasons as required under Section 13 as to why she cannot return to Saudi Arabia. Accordingly, the AAO finds that the applicant has failed to meet her burden of proof in demonstrating that there are compelling reasons that prevent her return to Saudi Arabia for the purposes of Section 13. As the applicant has failed to demonstrate that there are compelling reasons that prevent her return to Saudi Arabia, the question of whether her 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. She has failed to establish that there are compelling reasons that preclude her return to Saudi Arabia. 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.