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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: **NOV 20 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: SELF-REPRESENTED

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 her 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 (1) filed her adjustment of status application while she was still maintaining diplomatic status, and (2) the applicant had failed to demonstrate that compelling reasons prevent her return to El Salvador. The director also noted that the U.S. Department of State issued its opinion on February 9, 2013, recommending that the application be denied because the applicant did not provide compelling reasons that prevent her return to El Salvador. *Decision of the Director*, dated March 13, 2013.

The director also denied the application of the applicant’s spouse [REDACTED] and her two dependent children [REDACTED] who each submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) seeking to adjust status under Section 13 as derivative dependents of the applicant. The director issued a separate decision denying their applications. The applicant’s spouse filed a Form I-290B, Notice of Appeal or Motion, appealing the decision to the director. The two other dependents did not file an appeal of the director’s decision denying their application. The AAO will issue a separate decision to the applicant’s spouse.¹

On appeal, the applicant submits an additional statement asserting reasons she considers compelling as to why she and her family cannot return to El Salvador.

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.²

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.

¹For each adverse decision, an applicant must submit a separate Form I-290B and associated fee. *See* 8 C.F.R. § 103.3(a)(1).

²The 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).

(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.

In addition, an applicant for adjustment of status under Section 13 must not be maintaining diplomatic status in order to apply for adjustment under Section 13; thus, his or her status must be terminated prior to the date on which the adjustment application is filed. Pursuant to 8 C.F.R. § 214.2(a), an alien admitted under section 101(a)(15)(A)(ii) or 101(a)(15)(G)(i) or (ii) of the Act maintains that status "for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status." Thus, the authority to determine the date of termination of status under section 101(a)(15)(A)(i) of the Act rests exclusively with the U.S. Department of State. An application for adjustment of status under Section 13 filed while the applicant is maintaining diplomatic or semi-diplomatic status is properly denied. However, denial of the application on this ground does not preclude the applicant from filing a new application once the requirement for applying – failure to maintain status – has been met.

In this matter, the record reflects that the applicant was admitted into the United States in June 2005 in an A-1 nonimmigrant status and thereafter served as [REDACTED] in Dallas, Texas. The applicant performed duties that were supportive of the [REDACTED] duties from June 20, 2005 until her status was terminated by the U.S. Department of State on February 24, 2012. The record reflects that the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status on February 21, 2012. Based on the record, when the applicant filed the Form I-485, on February 21, 2012, she was maintaining diplomatic status at the time and was therefore was statutorily ineligible to apply for adjustment

under Section 13. Accordingly, the AAO finds that the director properly determined that the applicant was statutorily ineligible to apply for adjustment of status pursuant to section 13 of the Act on February 21, 2012. The applicant has provided no evidence to rebut this finding.

The AAO also concurs with the director's determination that the applicant failed to establish compelling reasons that prevent her return to El Salvador.

In the various statements the applicant submitted in support of her Section 13 application, the applicant stated that as a consular officer she issued passports, travel documents and visas to individuals traveling to El Salvador. She also interviewed and issued travel documents to criminals that have been ordered deported from the United States back to El Salvador. The applicant indicated that some of the interviews took place at detention facilities and that some of the criminals she interviewed were gang members. The applicant claimed that she collaborated with U.S. Immigration and Custom Enforcement (USICE) to facilitate the process of deportation of Salvadoran nationals who violated immigration laws of the United States and those that have been convicted of misdemeanors, gang related felony and serious crimes in the United States. The applicant claimed that she was threatened by criminals while discharging her duties because they perceived her as helping the United States to deport them as opposed to fighting for them to remain in the United States.

At her adjustment of status interview on May 15, 2012, the applicant was asked to state the compelling reasons that prevent her return to El Salvador. The applicant responded that returning to El Salvador would place her and her family at risk. The applicant specifically declared "living in El Salvador is unsafe. I have also encountered criminals who have been deported who are under the impression that the consular interviewer was responsible for their deportation, and for political reasons." On appeal, the applicant reiterated her prior statements that having issued documents that was used by the U.S. government to deport Salvadoran nationals who have been convicted of various crimes in the United States, gang members and their affiliates, puts her and her family at greater risk. The applicant also stated that her father was a former member of the Salvadoran military and that she and her family left El Salvador for the United States in 1979 because of the threats directed to her father and their family based on his military service. The applicant claims that she and her family would be targeted by criminals and members of the gang because of her father's prior military service. The applicant indicated that country condition information on El Salvador shows that family members of the military are being targeted by criminals and gang members in El Salvador.

Upon a *de novo* review of the record, the AAO finds that the applicant failed to establish compelling reasons that prevent her 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).

A review of that country condition information on El Salvador shows a country that is marred by gang violence, kidnapping for ransom and other insecurities caused in part by the members of the gang operating with impunity in the country, other criminal elements, and poverty in the country. The AAO also acknowledges the applicant's fear of returning to El Salvador due to the violence and insecurity in the country and her apprehension that she and her 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 she is at greater risk of harm because of her past government employment, political activities or other related reasons. The record contains no substantive and probative evidence that shows compellingly that the applicant is unable to return to El Salvador and that supports the applicant's claim that she and her family would be harmed by members of the gang and other criminal elements in El Salvador because of her past government employment.

The applicant's claims on appeal that she would be targeted by criminals and gang members because of her diplomatic work at the [REDACTED] in Dallas, Texas or because of her father's prior military service in El Salvador in the 1970s, have not been substantiated by the record. 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 children 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 as to provide a better living condition for her family are not compelling reasons under Section 13. The applicant has not provided substantive evidence that her family would be at greater risk of harm because of her past government employment. The evidence of record does not show that the applicant and her 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 her burden of proof in demonstrating that there are compelling reasons that prevent her return to El Salvador.³ As the applicant has failed to demonstrate that there are compelling reasons preventing her return to El Salvador, 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 preventing her 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 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.

³ 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 she cannot return to El Salvador. See Interagency Record of Request (Form I-566).