



U.S. Citizenship
and Immigration
Services

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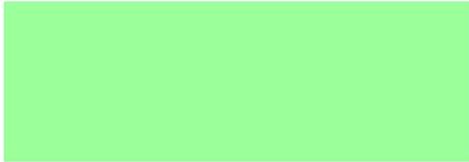
DATE: **OCT 03 2013** Office: NATIONAL BENEFITS CENTER

FILE: 

IN RE: Applicant: 

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:

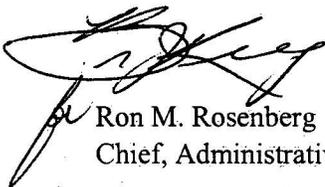


INSTRUCTIONS:

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 (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 Armenia, 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 amended, 95 Stat. 1611, 8 U.S.C. § 1255b, as 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 his return to Armenia. The director also noted that the U.S. Department of State issued its opinion on January 16, 2013 recommending that the applicant's request for adjustment of status in the United States be denied because the applicant presented no compelling reasons why he cannot return to Armenia. *See Director's Decision*, dated February 5, 2013.

On appeal, counsel asserts that the applicant has established compelling reasons why he cannot return to Armenia. Counsel claims that the Armenian government "stripped [the applicant] of his diplomatic title after expressing his dissent to government policy during the political turmoil." Counsel also claims that the applicant cannot avail himself of the protection of his country "because [the applicant] has made it known to several government officials that he opposes government policy." *See Appeal of Denial of I-485 Application for Adjustment of Status under Section 13 of the Act of 1957*, dated March 8, 2013.

In support of the appeal, the record includes, but is not limited to statements from the applicant and a brief from counsel. The AAO has reviewed all of the evidence of record, 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 [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

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).

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, administrative, technical 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 in April 2004 in an A-2 nonimmigrant status and served as [REDACTED]

In May 2005, the applicant's duties changed to that of the [REDACTED]

In this capacity, the applicant acted as the [REDACTED]

The applicant's duties were in direct support of the Ambassador's diplomatic duties. As such the applicant performed duties that are semi-diplomatic in nature. The applicant's status was terminated by the U.S. Department of States on March 31, 2008. On May 2, 2008, the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status. 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 of his application for adjustment of status on May 2, 2008.

The issues before the AAO in the present matter are, therefore, whether the record establishes that the applicant has compelling reasons that prevent his return to Armenia 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).

The AAO has reviewed the applicant's statements and counsel's assertions on appeal and find them insufficient to establish that compelling reasons prevent the applicant from returning to Armenia. At his adjustment of status interview on December 4, 2008, the applicant stated under oath before an immigration officer that he terminated his employment at the Embassy because "I decided to seek adjustment of status as I was offered a job from [REDACTED] and had no desire to work for an undemocratic government." The applicant stated that the compelling reasons that prevent his return to Armenia were that he had worked in the United States and accepted the ideals of democracy and cannot imagine returning to Armenia to work for an unelected government that sent troops to kill its citizens. On appeal however, counsel for the applicant claims that the applicant is seeking relief under Section 13 because "the Armenian government stripped him of his diplomatic title after expressing his dissent to government policy during political turmoil." Counsel also claims that "[the applicant's] expression of political dissent" was particularly troubling given his position as the spokesperson at the embassy. This distinct characteristic made him a specific target for the government." Counsel further claims that the applicant cannot avail himself of the protection of his country because "he has already made it known to several government officials that he opposes government policy." Counsel's assertions on appeal are inconsistent with the applicant's prior statements regarding the termination of his employment at the Embassy and the reasons why he cannot return to Armenia. The inconsistencies cast some doubt on the credibility and reliability of the evidence provided by the applicant in support of his

application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho, id.*

The AAO acknowledges the applicant's desire to remain in the United States for employment and a better standard of living, however, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The evidence of record does not establish that the applicant is unable to return to Armenia because of any action or inaction on the part of the government of Armenia or other political entity there as required under Section 13. The applicant has not provided substantive and probative evidence showing that he is at greater risk of harm because of his past government employment, political activities or other related reason. It is also noted that the U.S. Department of State has recommended that the applicant's adjustment of status in the United States be denied because he has presented no compelling reasons that preclude his return to Armenia. *See* Interagency Record of Request (Form I-566). The AAO therefore, concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to Armenia. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Armenia, 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. 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.