



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 03 2013** Office: NATIONAL BENEFITS CENTER FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:
[REDACTED]

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,

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 had failed to demonstrate that compelling reasons prevent her return to El Salvador. *Decision of the Director*, dated February 20, 2013.

The director also denied the application of the applicant's children [REDACTED] and [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 her application. The dependents have not filed a Form I-290B, Notice of Appeal or Motion.¹

On appeal, counsel for the applicant asserts that the applicant resigned her position as a [REDACTED] in New York, New York and that the U.S. Department of State terminated her status prior to her filing the Form I-485. Counsel also asserts that as [REDACTED] in New York, New York, 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 her and her family if she returned to El Salvador. 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.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.

A review of the record establishes the applicant's eligibility for consideration under section 13 of the 1957 Act. The applicant entered the United States on July 19, 2006 in an A-1 nonimmigrant status and served as [REDACTED], New York. As [REDACTED] the applicant served as the [REDACTED] from July 19, 2006 until terminated on February 15, 2011. As such, the applicant performed duties that were diplomatic in nature. Accordingly, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(i) of the Act but no longer held that status at the time she filed her application for adjustment on July 27, 2011.

In a June 15, 2011 statement that the applicant submitted in support of her application, the applicant stated that she has received multiple threats from nationals and citizens of El Salvador because of the nature of her work as [REDACTED]. The applicant indicated that one of her principal duties was to interview Salvadorans who had been issued deportation orders from the United States, including criminals who had served their sentences. The applicant stated that some of the criminals she interviewed were gang members belonging to MS-13 and the 18th Street gangs, and their "clikas." She also stated that some of the people she interviewed accused her of assisting the United States to deport them instead of helping them to remain in the country and that these individuals threatened to harm her and her children when she returns to El Salvador. The applicant further stated that on February 25, 2006, April 28, 2006 and June 12, 2006, threatening letters signed "M.S." were mailed to her home demanding

that she pay a specified amount of money or risk harm to her children. The applicant indicated that she did not report the incidents to the National Police or the Attorney General's office because she was afraid that her family remaining in El Salvador would "inherit the problem" and because she did not have the name of the people to denounce. The applicant recounted an incident that involved her son when he traveled to El Salvador on vacation in March 2011. The applicant claimed that two unknown men stopped her son on the street, demanded that he surrender his valuables to them and when her son resisted, they threatened him and left the scene. The applicant further claimed that her son was frightened by the experience and decided to leave El Salvador before the end of his vacation.

At her adjustment of status interview on November 8, 2011, the applicant was asked to state the compelling reasons that prevent her return to El Salvador, she stated "threats that I received while interviewing the people that were deported. Most of these people are gang members." On appeal, counsel states:

The applicant has provided very specific reasons that she is at a great risk of harm because of her past government employment. They are outlined in great detail and were described in great detail at her interview. It is clear that the threats and harm suffered are directly related to her employment with the consulate of El Salvador. It is also clear that the government cannot protect her from this harm as she has been threatened by former El Salvador nationals who were denied immigration benefits.

Counsel submitted photocopies of undated handwritten notes written in the Spanish language with accompanying English translation that he claimed were written by the MS-13 gang and sent to the applicant demanding that the applicant pay specified sums of money to them or she and her family would be harmed.

In his February 20, 2013 decision, the director, noted the U.S. Department of State's recommendation of February 2, 2013 that the application be denied, because the applicant was still in status at the time she filed her application. The director however, denied the application on the grounds that the applicant failed to provide compelling reasons why she cannot return to El Salvador. On appeal, counsel argues that the applicant was no longer in diplomatic status at the time she filed the Form I-485 and submitted a copy of a Notification of Termination, from the U.S. Department of State, Office of Foreign Mission, indicating that the applicant's status was terminated on February 15, 2011. The AAO finds that, 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)(i) of the Act but no longer held that status at the time of her application for adjustment of status on July 27, 2001.

The issues before the AAO in the present matter are whether the record establishes that the applicant has compelling reasons that preclude her return to El Salvador and that her 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 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).

The AAO has reviewed the applicant's statements, counsel's assertions as well as the country condition information submitted 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 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 she is unable to return to El Salvador and that supports the applicant's claim that she and her family had been and continue to be threatened by members of the MS-13 and the 18th Street gangs and their "clikas" because of her past government employment.

The AAO notes that the photocopies of the letters bearing the initials "M.S." are of questionable credibility in that the letters do not show the applicant as the recipient and do not show the date they were written. Most importantly, the letters were purportedly sent to the applicant before she assumed her position as [REDACTED] on July 19, 2006. Therefore, it appears that the letters, if sent to the applicant, were not directed to her because of the work she did as [REDACTED]. Accordingly, the letters have no probative value as evidence of harm the applicant and her family have been subjected to or the threat of harm that they may be subjected to in the future if she returned to El Salvador. Counsel's assertions that the applicant and her family have been targeted by criminals and members of gangs for her 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 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 that her children may experience a better life 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. 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.