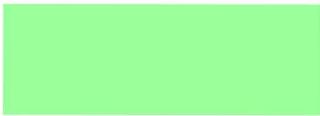


(b)(6)

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

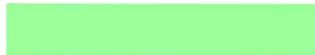


DATE: Office: NATIONAL BENEFITS CENTER
OCT 29 2013

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,

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 Burundi 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 an alien who is the dependent spouse of an individual 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 compelling reasons that prevent her return to Burundi. The director also noted that the U.S. Department of State indicates that the applicant's spouse's status terminated on January 21, 2007. See Director's Decision, dated January 30, 2013.

The director also denied the Application(s) to Register Permanent Residence or Adjust Status (Form I-485), of the applicant's children: [REDACTED] The dependents have not filed a Form I-290B, Notice of Appeal or Motion.¹

On appeal, counsel for the applicant submitted a Form I-290B, Notice of Appeal or Motion, a Memorandum of Law, an affidavit from the applicant dated February 27, 2013, and country condition information on Burundi 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 her 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

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).

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 was admitted into the United States on September 24, 1999, in an A-1 nonimmigrant status as the dependent of her husband, [REDACTED] who worked as [REDACTED] until his status was terminated on January 21, 2007. In his position, the applicant performed duties that were diplomatic in nature. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on March 3, 2009. 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 she filed the application for adjustment of status on March 3, 2009.

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 Burundi and that her 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 a personal statement on appeal, the applicant indicated that her spouse has been targeted, and continues to be targeted in Burundi by members of [REDACTED], because of his membership in the [REDACTED] because of his employment as a counselor to three [REDACTED] from 1993 to 1996, and because of his past employment as [REDACTED] from 1999 until 2007. The applicant states that her spouse is also "particularly wanted by the [REDACTED] government because he had negotiated and supported the United Nations peacekeeping mission in Burundi, which the [REDACTED] opposed and curtailed. At her adjustment of status interview on July 30, 2009, the applicant stated there are compelling reasons that prevent her return to Burundi, specifically that individuals from the opposition tried to kill her because of the appointment of her husband to a political party, and because she is a Tutsi and her husband is a Hutu, and in her country there's a big division between Tutsi and Hutu, and anytime

there's a misunderstanding within the population, the Tutsi try to kill the Hutu, and the Hutu try to kill the Tutsi. The applicant stated that she "didn't belong to any part of the society" as the Hutus don't feel comfortable being with her and the Tutsi think she is spying on them. The applicant also indicated at that interview that since her husband stopped working for the United Nations in 2007, she doesn't "know where he is, since he lost his job he was very depressed, [and] I think he was very embarrassed to stay at home without work, and then he left me and I didn't know where he went." When asked by the interviewing officer if her husband was applying for adjustment of status under Section 13, she replied: "I don't know anything about him now." She also indicated that she did not think her husband would resume his government profession "because there's a lot of problems with the government as of now" and if he were to remain in the United States she thinks he would try to do some "specific studies in order to work for this country."

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 AAO has reviewed the applicant's statements and country condition information submitted in support of the application and finds them insufficient to establish compelling reasons that prevent the applicant from returning to Burundi. The AAO acknowledges that there can be violence and lack of security in Burundi caused in part by the political instability, terrorists and other extremist groups operating in Burundi and there are risks of living in certain areas as the turmoil and violence by these

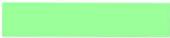
groups persists. We note that the general threat of terrorism and violence is not a sufficiently compelling reason under Section 13 because the threat is directed to all populations in the country and not limited to former diplomats and their families such as the applicant and her spouse. The applicant has not provided any credible evidence to establish that she and her family will be specifically targeted by these extremist or terrorist groups or by the current government of Burundi because of her spouse's past employment with the government of Burundi.

The AAO also acknowledges the applicant's desire to remain in the United States for the overall wellbeing of her family, however, the applicant has failed to demonstrate that she is unable to return to Burundi based on compelling reasons related 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. The AAO further acknowledges the difficulties the applicant's children may encounter in adjusting to living in Burundi after a prolonged period of absence from the country. 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 because of her spouse's past government employment, political activities, or other related reasons. The desire to create better opportunities for family in the United States is not a compelling reason under Section 13 of the Act. The evidence of record does not establish that the applicant is unable to return to Burundi because of any action or inaction on the part of the government of Burundi or other political entity there as required under Section 13.

The AAO does not find evidence in the record to establish that individuals who served the government of Burundi such as the applicant's spouse have been targeted or will be targeted by the current government of Burundi. Also, the evidence of record does not establish that former diplomats are being targeted by the current government of Burundi due to their government service, political activities or other related reasons. 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)). Therefore, the evidence of record in this case is insufficient to establish that the applicant in her role as the spouse of a returning diplomat would be at greater risk of harm because of her spouse's past government employment, political activities or other related reason.

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 her burden of proof in demonstrating that there are compelling reasons that prevent her return to Burundi for the purposes of Section 13.² As the applicant has failed to demonstrate that there are compelling reasons preventing her return to Burundi, the question of whether her adjustment of status would be in the U.S. national interest need not be addressed.

² 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 Burundi. See Interagency Record of Request (Form I-566).



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 Burundi. 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.