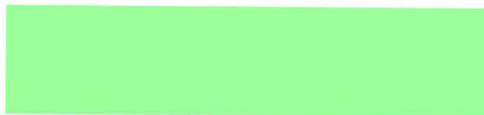


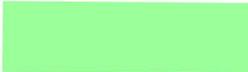
(b)(6)

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

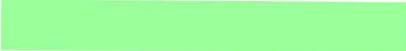


U.S. Citizenship  
and Immigration  
Services



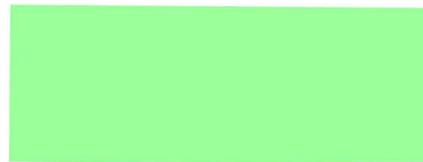
DATE: Office: NATIONAL BENEFITS CENTER FILE: 

SEP 05 2013

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 (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 Kenya, who is seeking to adjust his 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 the dependent relative of an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

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 Kenya. *Decision of the Director*, dated January 30, 2013.

On appeal, counsel for the applicant asserts that the director incorrectly denied the applicant's application, that the director did not fully consider all the facts of this case, the current climate of the applicant's native country and the explanation the applicant submitted as to why he cannot return to his native country. Counsel contends that the applicant has provided compelling reasons why he cannot return to Kenya. *See Form I-290B, Notice of Appeal or Motion*, dated February 28, 2013; *see also, Brief in Support of Appeal from Denial of I-485 Application for Adjustment of Status*, dated March 26, 2013.

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 Attorney General 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 Attorney General 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 Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

8 U.S.C. § 1255(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 issues before the AAO in the present matter are whether the record establishes that the applicant's father performed diplomatic or semi-diplomatic duties while employed at the [REDACTED] and whether the applicant has demonstrated that compelling reasons preclude his return to Kenya – 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).

Upon a *de novo* review of the record, the finds that the applicant is not eligible for consideration under Section 13 of the Act.<sup>1</sup>

The record shows that the applicant was admitted into the United States in a G-1 nonimmigrant status on August 19, 1993 as the dependent child of his father, [REDACTED] who was admitted in a G-1 nonimmigrant status in 1991 and served as a [REDACTED] to the [REDACTED] until the termination of his duties and status on October 24, 1995.<sup>2</sup> The applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status on April 14, 2010. Therefore, as per the requirements of Section 13, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(G)(i) of the Act as a dependent of his father but no longer held that status at the time of his application for adjustment on April 14, 2010.

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<sup>1</sup> 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).

<sup>2</sup> The evidence of record indicates that the applicant's father returned to Kenya after the termination of his duties by the government of Kenya.

Although the record shows that the applicant obtained classification under section 101(a)(15)(G)(i) of the Act as a dependent of his father, the applicant has failed to establish that his father performed diplomatic or semi-diplomatic duties for the [REDACTED] as required by 8 C.F.R. § 245.3. At his adjustment of status interview on July 27, 2010, the applicant stated that his father served as [REDACTED]. He also stated that his father's duties were diplomatic in nature. The applicant further stated that he had documentation which described his father's duties. However, the record does not contain a copy of the document indicated by the applicant. The record does not contain any information from the Kenyan government containing a description of the duties performed by the applicant's father. The only document from the Kenyan government is a Form I-566, Interagency Record of Request prepared on behalf of the applicant and signed by the [REDACTED].

This document does not have any information on the applicant's father.

The AAO notes that the essential role of a diplomat is the representation of a country in its relations with other countries. *See American Heritage Dictionary of the English Language, 4th Edition, 2000* (Diplomat: One, such as an ambassador, who has been appointed to represent a government in its relations with other governments); *Black's Law Dictionary* (Diplomacy: The art and practice of conducting negotiations between national governments). Although the applicant's father served as [REDACTED] there is no evidence indicating that his duties were diplomatic or semi-diplomatic as opposed to administrative or technical in nature. There is no evidence in the record that the applicant's father had representative duties or authority on behalf of the Kenyan government. The applicant's assertion at his adjustment of status interview that his father's duties at the [REDACTED] were diplomatic is not substantiated by any other evidence. 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 record does not establish that the applicant's father had any formal advisory or decision-making role at the [REDACTED] or that he represented the Kenyan government before any foreign government in an official capacity. The AAO acknowledges that the inclusion of the term semi-diplomatic in 8 C.F.R. § 245.3 indicates that those accredited aliens not engaged in diplomatic duties, but who perform duties in direct support and furtherance of such activities, may also be considered for adjustment of status under Section 13. However as noted above, 8 C.F.R. § 245.3 provides that 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 record in this matter is insufficient to establish that the applicant's father performed semi-diplomatic duties in support of the [REDACTED] rather than clerical and administrative duties. Accordingly, the record in this matter is insufficient to find that the applicant's father performed diplomatic or semi-diplomatic duties and that the applicant, his dependent, is eligible for consideration for benefit under Section 13.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. He has failed to establish that his father performed diplomatic or semi-diplomatic duties. As the applicant has failed to establish his eligibility for adjustment of status under section 13, the issue of whether he has established compelling reasons that prevent his return to Kenya or

whether his adjustment of status will be in the national interest of the United States will not be discussed. 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.