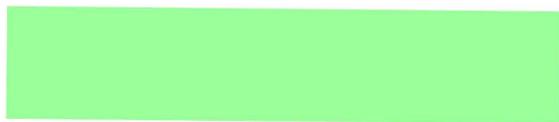
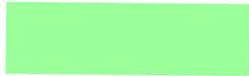




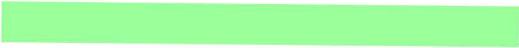
U.S. Citizenship  
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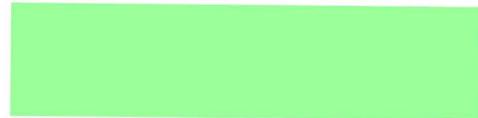
DATE: Office: NATIONAL BENEFITS CENTER FILE: 

SEP 05 2013

IN RE: Applicant: 

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:

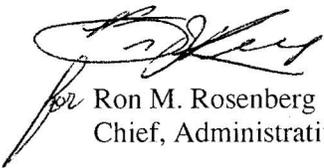


INSTRUCTIONS:

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. The director also noted that the Department of State issued its opinion on December 26, 2012, recommending that the application be denied because the applicant had failed to provide compelling reasons that prevent her return to her country. *Decision of the Director*, dated January 9, 2013.

The director also denied the application of the applicant's daughter [REDACTED] who submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) seeking to adjust status under Section 13 as a derivative dependent of the applicant. The director issued a separate decision denying her application. The dependent has filed a separate Form I-290B, Notice of Appeal. The AAO will issue a separate decision for this dependent.

On appeal, the applicant asserts that as a Consul of El Salvador in Arizona, she provided travel documents for the deportation of El Salvador citizens including criminals from the United States. She fears that the criminal deportees will harm her and her family if she returned to El Salvador. The applicant submitted an additional statement 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.<sup>1</sup>

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

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<sup>1</sup>The 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).

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 last entered the United States on December 25, 2011 in A-1 nonimmigrant status to continue her work as a Consul at the Consulate General of El Salvador in [REDACTED]. The applicant performed duties of a diplomatic or semi-diplomatic nature for the Consulate General of El Salvador from June 2006 until January 1, 2012. On January 1, 2012, the Consulate General of El Salvador in [REDACTED] notified the U.S. Department of State of the termination of the applicant's duties. 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 February 3, 2012.

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).

In her May 15, 2012, interview with a USCIS officer in San Jose, California, the applicant executed a Sworn Statement. In that statement, the applicant indicated the following as compelling reasons that prevent her return to El Salvador:

The strongest reason is that almost 14000 individuals during my tenure were deported to El Salvador. Most of them are criminals. When they arrived in Salvador, they were set free. And the index of crime in Salvador is high, 20-25 persons are killed daily. When investigation of the crime is made, lots of people involved are people who were deported. I no longer belong to the diplomatic corps; I am exposed to people roaming the street. That's my strongest fear for personal security and my family. I received many threats from Salvadoran immigrants who were removed from the US during my tenure because they believed that I worked for the US government.

On appeal, the applicant submitted an additional statement of the reasons she does not want to return to El Salvador. The applicant also submitted country condition information on the security

issues facing El Salvador. In that statement, the applicant indicated that as Consul of El Salvador in Arizona, she interviewed and provided temporary travel documents to all the Salvadoran criminals and non-criminals that were deported from the United States to El Salvador. The applicant indicated that often times, she had to travel to prisons and immigration detention centers in Arizona and New Mexico to conduct the interviews. The applicant stated that the individuals she interviewed perceived her as helping the United States to deport them instead of her working to have them remain in the United States. The applicant recounted two incidents when she was threatened by individuals she was interviewing. The first incident was in the [REDACTED] detention facility, where she was physically threatened and had to be rescued by detention officers. The second incident was in [REDACTED], where she was verbally threatened by [REDACTED] gang member. The applicant fears that some of these deportees including the criminals and gang members would recognize her on the streets of El Salvador and would come after her. For the same reason, the applicant also fears for the safety of her family in El Salvador.

In addition, the applicant fears that some of the police officers she investigated when she worked as the Inspector General of Police in El Salvador from 2001 to 2006 would come after her once she returns to El Salvador. The applicant claims that during the said period, she investigated about 1500 agents and police officers and 300 or more administrative officers. The applicant also claims that between 2005 and 2006, she and her family received lots of verbal threats over the phone and damages to her personal property. *See Declaration of [REDACTED]* In support of her assertions and the appeal, the applicant submitted copies of various country condition reports on El Salvador, copies of newspaper articles and copies of online news articles on El Salvador.

The AAO has reviewed the applicant's statements as well as the country condition information she 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 insecurity caused in part by the gang violence, other criminal elements, and poverty in the country. The AAO also acknowledges that the reports show that the government of El Salvador is making efforts to curb the violence and insecurity in the country and to restore the country to some normalcy. The AAO further 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 does not present any specific evidence 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 evidence showing that she is at greater risk of harm because of her past government employment, political activities or other related reasons.

The record contains no probative evidence supporting the applicant's claim that she was verbally and physically threatened by criminals including members of the [REDACTED] gang in Arizona and New Mexico that she interviewed and issued temporary travel documents to El Salvador. Thus the applicant's claim that she and her family would be targeted and harmed by [REDACTED] gang members because she "assisted" in their deportation from the United States to El Salvador is not substantiated by the record. The record in this matter does not contain evidence of specific threats against the

applicant and her family because of her past government employment that shows compellingly that she is unable to return to El Salvador. It is noted that the applicant traveled back and forth to El Salvador during her tenure as Consul of El Salvador in [REDACTED] and her children have been living in El Salvador. The record does not contain specific incidents of threat or harm to the applicant or her children in El Salvador. 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)). It is also noted that the U.S. Department of State has recommended that the applicant's adjustment of status be denied because the applicant has presented no compelling reasons that prevent her return to El Salvador. See Interagency Record of Request (Form I-566). 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.