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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: SEP 0 5 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 (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 Venezuela 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 amended, 95 Stat. 1611, 8 U.S.C. § 1255b, as the derivative dependent spouse 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 Form I-485, Application to Register Permanent Residence or Adjust Status after determining that the applicant's spouse had failed to demonstrate that compelling reasons prevent his and his family's return to Venezuela. The director also noted that the U.S. Department of State issued its opinion on January 18, 2013, recommending that the applicant's spouse's adjustment of status application be denied because he has failed to present compelling reasons why he cannot return to Venezuela. The director denied the applicant's adjustment of status application on the basis of her spouse's ineligibility for benefits under Section 13. *Decision of the Director,* dated February 4, 2013.

In a separate decision, the AAO concurred with the director's decision and dismissed the appeal finding that the applicant's spouse had failed to establish that compelling reasons prevent his and his family's return to Venezuela. As the applicant's eligibility for adjustment under Section 13 derives from the eligibility of her spouse, and the applicant has not provided new facts or evidence separate from those claimed by her spouse, the AAO finds that the applicant is also ineligible for adjustment of status.

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 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.