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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

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, 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 his 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 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 Venezuela. The director also noted that the U.S. Department of State issued its opinion on January 18, 2013 recommending that the applicant's request for adjustment of status in the United States be denied because the applicant presented no compelling reasons why he is unable to return to Venezuela. *See Director's Decision*, dated February 1, 2013.

The director also denied the application of the applicant's spouse [REDACTED] and his son [REDACTED] who each submitted an Application for Status as Permanent Resident (Form I-485) seeking to adjust status under Section 13 as dependent derivatives of the applicant. The director issued separate decisions denying these applications. These dependents each filed a separate Form I-290B, Notice of Appeal or Motion. The AAO will issue a separate decision for each of the dependents.

On March 5, 2013, counsel for the applicant submitted a Form I-290B, Notice of Appeal or Motion, and a letter asserting that the applicant has provided evidence to establish compelling reasons why he cannot return to Venezuela. Counsel contends that the decision "ignores the evidence regarding the personal targeting of the applicant, the evidence regarding the risk to high ranking military officers who dissent with Chavez as well as previous AAO decisions recognizing 'that the Venezuela government has persecuted opposition figures in recent year.' "

With regards to the AAO's prior decisions cited by counsel, those decisions are not precedent decisions and therefore have no bearing on the applicant's case. Counsel's reliance on those decisions is without merit. The AAO will review the present matter on a *de novo* basis based on the evidence of record, applicable law and precedent decisions.<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

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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).

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 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, a [REDACTED] was admitted into the United States on October 1, 2010, as a G-1 nonimmigrant and served first, as the [REDACTED] Venezuelan delegation before the [REDACTED] until June 2002, and later as the [REDACTED] to the Venezuelan Ambassador to the Organization of American States (OAS) until [REDACTED]. See *Record of Sworn Statement by [REDACTED]* dated September 11, 2009. The applicant performed duties that were diplomatic and/or semi-diplomatic in nature. The U.S. Department of State was advised of the termination of the applicant's duties on July 30, 2004. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on June 19, 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)(G)(i) of the Act but no longer held that status at the time of his application for adjustment of status on June 19, 2009.

The issues before the AAO in the present case are, therefore, whether the record establishes that the applicant has compelling reasons that prevent his return to Venezuela and that his adjustment of status would serve U.S. national interest – 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).

At his adjustment of status interview on September 11, 2009, the applicant completed a sworn statement stating the following as the compelling reasons that prevent his return to Venezuela: "The government of Venezuela has intensified its implementation of its revolutionary or communist agenda or regime. President Chavez has control of the Supreme Court, the General Assembly, the Attorney General of the country and the public defense of the people and the people who present opposition or have been dissidents are being persecuted. President Chavez has me on the list as a dissident with other high-ranking officials." The applicant stated that several officers on the dissident list have had to leave Venezuela and the ones that remained have had their homes invaded, their privacy violated, and harassed. The applicant claims that Chavez considers him and his colleagues as enemies of the revolution and so he cannot go back to Venezuela under these circumstances. The applicant further stated that in 1999, he expressed his opposition to the politicization of the military and that "Chavez put me in his sight because I could influence other officers of my command." The applicant declares "being in Venezuela, I would not have a normal life for myself and my family."

In a September 2, 2009 affidavit which the applicant submitted in support of his adjustment application, the applicant stated that his strongest reason for not wanting to return to Venezuela is political because of "my stance against Chavez and his policies that are ruining Venezuela." The applicant stated that his opposition to Chavez began in 1999 and 2000 when he voiced his opposition to the politicization of the armed forces. The applicant claims that as a result, he was "taken out of the [redacted] and sent abroad outside Venezuela," to "neutralize the threat we constituted." The applicant also claims that his position representing Venezuela at the [redacted] was eliminated by Chavez and he was in essence "fired." The applicant further claims that he and other high ranking members of the military leaders are "pro-democracy" and do not "sign on" to Chavez's communist and revolutionary agenda and that Chavez has persecuted the military leaders that remained in Venezuela. The applicant claims that he is on Chavez's list as a dissident. He fears for his safety if he returned to Venezuela as well as discrimination in terms of employment for him and members of his extended family.

On appeal, counsel for the applicant asserts that the applicant's name was included in a black list of high ranking "dissident" generals which will subject him and his family to greater risk of harm than the average Venezuelan supporting the opposition. Counsel cited to country condition reports on Venezuela that reported the persecution of the opposition by Chavez and his administration. Counsel contends that the applicant's risk of future persecution is corroborated by the country reports and constitutes irrefutable evidence of compelling reasons why the applicant and his family cannot return to Venezuela.

In support of the appeal, the record contains various country condition reports, news articles, and on-line blogs and news reports on Venezuela reporting on the persecution and the harsh treatment of opposition and dissidents by Chavez and his administration. Counsel also submitted updated country reports on Venezuela following the death of Chavez.

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.

The AAO has reviewed the applicant's statements, counsel's assertions on appeal, the country condition information submitted in support of the appeal, as well as the current country condition in Venezuela. The AAO acknowledges the country reports on Venezuela that the Chavez regime has been condemned internationally for its abuse of human rights and for the persecution of people he perceived as opponents of his administration. The AAO also acknowledges the applicant's claim that opponents of Chavez and his administration have been subjected to various forms of persecution in Venezuela. However, the applicant has not provided specific substantive evidence that he would be targeted for his opposition to Chavez and the present government of Venezuela as he has claimed. There is no probative evidence in the record that the applicant made public statements against President Chavez and his administration. The record does not include probative evidence showing that the applicant is at greater risk of harm because of his past employment for the government of Venezuela, political activities or other related reasons. On the contrary, the record shows that the applicant was appointed to represent the government of Venezuela in a diplomatic capacity from 2000 through 2004, despite his alleged opposition to the Chavez administration in 1999 and 2000. Therefore the applicant's claim that he was targeted by the Chavez administration and the current government is not supported by the record. 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 notes that the applicant served the government of Venezuela in two diplomatic capacities, first as the country's representative to the [REDACTED] and later as [REDACTED]. During this period, the applicant traveled back and forth to Venezuela. The record does not contain information regarding specific incidents that occurred while the applicant was in Venezuela. The record also shows that the applicant has two children who he

indicated at the time of his adjustment of status interview were residing in Venezuela and are not part of his application. There is no information about specific threats or incidents of harm against his children in Venezuela. The current country information on Venezuela indicates that Nicolas Maduro was elected the new president of Venezuela in the wake of Chavez's death. The applicant has not provided probative evidence that he is a target of the current Venezuelan administration because of his prior government service, political activities or other related reasons. It is also noted that the U.S. Department of State has issued its recommendation that the applicant's adjustment of status be denied because the applicant presented no compelling reasons why he cannot return to his country. The record is insufficient to establish that the applicant in his role as a returning diplomat would be at greater risk of harm because of his past government employment, political activities or other related reasons.

The AAO acknowledges the applicant's concern that he and his family may face discrimination in terms of employment but this is not a compelling reason under Section 13. Additionally, general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. Accordingly, the AAO finds that the applicant has failed to establish that there are compelling reasons that prevent his return to Venezuela.

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. As such, the AAO finds that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to Venezuela for the purposes of Section 13. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Venezuela, the question of whether his 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. He has failed to establish that there are compelling reasons that preclude his return to Venezuela. 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.