



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE **SEP 13 2013** Office: NATIONAL BENEFITS CENTER FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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.

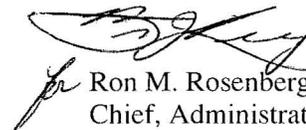
ON BEHALF OF APPLICANT:

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, 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 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 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 his return to El Salvador. The director also noted that the Department of State issued its opinion on February 9, 2013, recommending that the application be denied because the applicant did not provide compelling reasons why he cannot return to his country. *Decision of the Director*, dated March 12, 2013.

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

On appeal, the applicant submits an additional statement and other documents indicating the reasons why he does not want to return to El Salvador.

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 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

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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).

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 was admitted to the United States on November 3, 2008, in an A-1 nonimmigrant status and he served as the [redacted] of El Salvador in Houston, Texas until his status was terminated by the U.S. Department of State on January 13, 2010. The applicant filed the Form I-485 application on April 23, 2010. As required in 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 he filed his application for adjustment of status.

The issues before the AAO in the present matter are whether the record establishes that the applicant has compelling reasons that prevent his return to El Salvador and that his 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 his 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).

At his adjustment of status interview on December 10, 2010, the applicant stated under oath before an immigration officer that the compelling reasons that prevent his return to El Salvador were to maintain the safety of his family, and to develop a business in the United States and contribute to the society through the creation of jobs. The applicant indicated that he started to receive anonymous telephone calls in 2009, threatening him and his family because of his affiliation to [REDACTED]

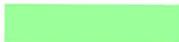
In an undated personal statement in the record, the applicant reiterated that the reason he does not want to return to El Salvador is for the safety of his family. The applicant stated that because of his membership and work on behalf of his party [REDACTED], and his businesses in El Salvador, he received many threats from unknown individuals whom he suspected were followers of the opposition party, [REDACTED]. The applicant also stated that in 1996, an attempt was made on his life, and that around June 2007, he started to receive calls requesting money to avoid attacks on his family and his business. The applicant claimed that these threats led the then president of El Salvador to assign him the position of [REDACTED] of El Salvador in Houston. The applicant further claimed that [REDACTED] party members in El Salvador are being harassed by [REDACTED] supporters and that his colleagues have advised him not to return to El Salvador. Furthermore, the applicant stated that he does not want to return to El Salvador because of a general lack of security in the country and the high murder rate.

On appeal, the applicant reiterates his general concern for the safety and overall wellbeing of his family. The applicant stated that he recently received information from the [REDACTED] warning him not to return to El Salvador because his life might be in danger. The applicant did not provide details why his life would be in danger if he returned to El Salvador. The applicant indicated that he would like to remain in the United States so that his United States citizen daughter, [REDACTED] will be able to grow up in her country and complete her education here. The applicant is concerned that [REDACTED] would have difficulty adjusting to life in El Salvador. The applicant further indicated his desire to remain in the United States because he and his spouse have invested in personal real estate and two businesses.

In support of the appeal, the applicant submits documents relating to his and his spouse's business, his daughter, [REDACTED] school records and country condition information on El Salvador.

The AAO has reviewed the applicant's statements, and the country condition information submitted. 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 gang members, other criminal elements, and poverty in the country. The AAO also acknowledges the applicant's fear of returning to El Salvador due to the violence and insecurity in the country and his apprehension that he and his 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 would 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 substantive evidence that he is at greater risk of harm because of his past government employment, political activities or other related reasons. The applicant's assertions of political retaliation by members of or supporters of [REDACTED] are not substantiated by the record. The applicant's claim that he and his family have been threatened by unknown individuals is not substantiated by the record. The record in this matter does not present substantive evidence that demonstrates specific threats against the applicant and his family because of his past government employment that shows compellingly that he is unable to return to 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)). Accordingly, the AAO finds the record is deficient in establishing a specific threat against the applicant or his family or that he would be subject to persecution because of his political affiliation with the [REDACTED] party.

The AAO acknowledges the difficulty the applicant, his wife and his U.S. citizen daughter would face in adjusting to life in El Salvador. However, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. In addition, the applicant's desire to remain in the United States to continue his business and to create a better economic situation for him and his family are not considered compelling reasons under Section 13. The evidence of record does not demonstrate that the applicant is unable to return to El Salvador because of any action or inaction on the part of the government of El Salvador or other political entity there as required under Section 13. Therefore, the AAO finds that the applicant has



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*NON-PRECEDENT DECISION*

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not met his burden of proof in demonstrating that there are compelling reasons that prevent his return to El Salvador. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to El Salvador, the question of whether his adjustment of status would be in the national interest of the United States 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 prevent his 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 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.