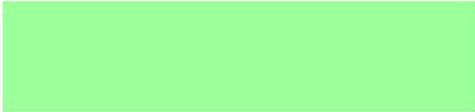


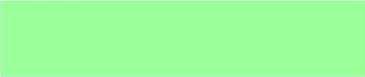


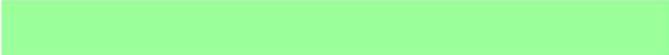
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **APR 01 2014** Office: NATIONAL BENEFITS CENTER



IN RE: 

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: SELF-REPRESENTED

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 the Philippines employed by the government of Kenya 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 Form I-485, Application to Register Permanent Residence or Adjust Status, after determining that the applicant (1) was maintaining "diplomatic" status at the time he filed the application to adjust status, (2) had no qualifying position because he did not perform diplomatic or semi-diplomatic duties; and (3) had failed to establish compelling reasons that prevent his return to the Philippines. The director noted that the U.S. Department of State issued its opinion on January 10, 2013, recommending that the application be denied because the applicant was not employed in a qualifying position as he did not perform diplomatic or semi-diplomatic duties, and that the applicant presented no compelling reasons why he cannot return to the Philippines. *Decision of the Director*, dated January 31, 2013.

The director also denied the application of the applicant's spouse (

who each submitted an Application to Register Permanent Residence or Adjust Status (Form I-485), seeking to adjust status under Section 13 as derivative dependents of the applicant. The director issued separate decisions denying these applications. The dependents did not file a Form I-290B, Notice of Appeal or Motion, appealing the decision of the director.

On appeal, the applicant asserts that he was admitted to the United States with a G-1 diplomatic visa and that the director's finding that he did not perform diplomatic duties is "contrary to the definition of the Act." The applicant also asserts that he has compelling reasons that prevent his return to the Philippines. The applicant indicates at part 3 of the Form I-290B that the appeal was for himself, his wife and his children.<sup>1</sup>

The AAO has reviewed all of the evidence of record, 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>2</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:

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<sup>1</sup> The regulation provides that for each adverse decision, an applicant must submit a separate Form I-290B and associated fee. See 8 C.F.R. § 103.3(a)(1). Therefore, the Form I-290B submitted in the present matter will be accepted as an appeal for the applicant alone. The applicant bears the burden of completing the Form I-290B accurately and according to its instructions. See 8 C.F.R. § 103.2(a)(1).

<sup>2</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).

(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 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.

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 AAO notes that Section 13 requires only that an applicant demonstrate that there are "compelling reasons demonstrating . . . that the alien is unable to return to the *country represented by the government which accredited the alien* . . ." (emphasis added). Though the applicant is a native and citizen of the Philippines, the record shows that he was accredited by the government of Kenya. The applicant was last admitted in G-1 status on May 1, 2008 and served as the Chauffeur for the Kenyan Ambassador to the United Nations in New York. The applicant indicated that his

employment terminated after two months of service. See *Sworn Statement of* [REDACTED], dated October 12, 2011.

The AAO concurs with the decision of the director that the applicant has not shown that he performed diplomatic or semi-diplomatic duties as required by 8 C.F.R. § 245.3. As stated previously, the applicant is not a citizen of Kenya, but he was employed as a temporary staff by the Kenyan Permanent Mission to the United Nations in New York. The record does not indicate that the applicant was registered with and accredited by the U.S. Department of State, Consular Affairs as a member of the Kenyan diplomatic corps to the United Nations in New York. The record does not contain a Notification of Termination from the U.S. Department of State Office of Missions indicating the accreditation date and the termination date of the applicant's status. The applicant testified under oath at his adjustment of status interview on October 12, 2011, that he entered the United States with a G-1 visa and served as the temporary Chauffeur for the Kenyan Ambassador to the United Nations in New York for two months. The applicant also testified that his official title was Driver/Chauffeur and that his duties were to drive "his boss" around and to perform other duties requested of him. Although the applicant testified that he considered his duties to be diplomatic, the AAO does not concur.

Although the term "diplomatic" is used in the Act to describe aliens admitted to the United States under section 101(a)(15)(A) of the Act, the language and intent of 8 C.F.R. § 245.3 is to exclude from consideration for adjustment of status under section 13 certain aliens admitted in "diplomatic" status and entitled to the rights and immunities afforded diplomats under international law. Both section 101(a)(15)(A) of the Act and the Vienna Convention recognize that certain accredited employees or officials admitted to serve within embassies or other diplomatic missions are not "diplomatic" staff. The Vienna Convention refers to such personnel as administrative and technical staff, service staff, or personal servants. *The Vienna Convention on Diplomatic Relations*, Art. 1 (April 18, 1961), 500 U.N.T.S. 95. Whereas ambassadors, public ministers, and career diplomatic or consular officers are admitted under section 101(a)(15)(A)(i) of the Act, those admitted under section 101(a)(15)(A)(ii) such as the applicant are described as "other officials and employees" accepted on the basis of reciprocity. These non-diplomatic employees are nevertheless afforded the rights and immunities of diplomatic staff. See *Vienna Convention, supra*, Art. 37.

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). In this case, the applicant was admitted to the United States in G-1 nonimmigrant status and was employed as a Chauffeur for the Kenyan Ambassador to the United Nations in New York. At his adjustment of status interview on October 12, 2011 before an immigration officer, the applicant stated that his official title was Chauffeur/Driver and described his duties as driving "his boss." Although the applicant equated his duties as diplomatic duties, the record does not contain detailed information or any official record describing the applicant's actual role and duties at the Kenyan Permanent Mission to the United Nations in New York and whether the duties are diplomatic in nature.

The record does not demonstrate that the applicant had any formal advisory or decision-making role at the Kenyan Permanent Mission to the United Nations in New York and the applicant himself testified that his position was not a high-ranking position and that he was not involved in negotiations between nations. The regulation at 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. By his own statement, the applicant served as a driver/Chauffeur at the Kenyan Permanent Mission to the United Nations in New York. The applicant was admitted to the United States as a staff member of the Kenyan Permanent Mission to the United Nations in New York and not as a member of its diplomatic corps. As such, the record in this matter has failed to demonstrate that the applicant, a non-citizen of Kenya, was entrusted with duties of a diplomatic or semi-diplomatic nature.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment of status under Section 13. He has failed to establish that he performed diplomatic or semi-diplomatic duties. As the applicant has failed to establish his eligibility for adjustment of status under section 13, the issues of whether he has established compelling reasons that prevent his return to the Philippines, and whether his adjustment of status will be in the national interest of the United States need 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.