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: FEB 25 2014 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: SELF-REPRESENTED

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 citizen of 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 a derivative dependent 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 had failed to demonstrate that compelling reasons prevent his return to his country. *Decision of the Director,* dated February 5, 2013.

On appeal, the applicant asserts that as a dependent of his mother, the principal, that his mother's pending application for adjustment of status should have been adjudicated before his own application. The applicant requests that his application be re-opened until a decision is made on his mother's application.

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.[1]

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 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

[1]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).

> 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 August 29, 2003, in a G-1 nonimmigrant status as a derivative dependent of his mother, who was admitted in a G-1 status and served as Counselor for the Permanent Mission of to the United Nations in New York. The status of the applicant's mother was terminated on September 29, 2010, and as a dependent of his mother, the applicant's status also terminated on September 29, 2010. 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)(G)(i) of the Act but no longer held that status at the time he filed his application for adjustment on October 12, 2010.

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

Upon a *de novo* review of the record, the AAO concurs with the director's determination that the applicant has failed to establish compelling reasons that prevent his return to 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.

In an October 7, 2010 statement which the applicant submitted in support of his application, the applicant indicated that he does not want to return to his country because he would be separated from his mother and sister and that he would have difficulties finding employment in his country. At his adjustment of status interview on October 26, 2011, the applicant indicated the following as compelling reasons that prevent his return to his country: he has been residing in the United States for seven years; he would be separated from his family; and he has built a life for himself in the United States and going back to his country would be like "starting over." The applicant stated that he does not believe that he or any member of his family would be subjected to any kind of persecution if he returned to his country.

The AAO has reviewed the applicant's statements, and find them insufficient to establish compelling reasons as required under Section 13 of the Act that prevent his return to his country. We acknowledge the applicant's concern of returning to his country after a prolonged period of absence. We also acknowledge the applicant's desire to remain in the United States to build a better life for himself. However, the general inconveniences and hardships associated with relocating to another country and the desire to remain in the United States for employment and a better living condition for one is not considered compelling reasons under Section 13. The applicant has not provided substantive evidence to establish that he or his family would be at greater risk of harm because of his mother's past government employment. The evidence of record does not show that the applicant and his family are unable to return to because of any action or inaction on the part of the government of or other political entity there as required under Section 13. 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 his return to *See* Interagency Record of Request (Form I-566). Accordingly,

the AAO concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to As the applicant has failed to demonstrate that there are compelling reasons preventing his return to 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 preventing his return to and that his continued residence in the United States is in the U.S. national interest. 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.