



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JAN 06 2014** Office: NATIONAL BENEFITS CENTER

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, 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)(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 El Salvador. The director also noted that the U.S. Department of State issued its opinion on February 9, 2013, recommending that the application be denied because the applicant had presented no compelling reasons why he cannot return to El Salvador. *Decision of the Director*, dated March 8, 2013.

The director also denied the application of the applicant's spouse [REDACTED]

[REDACTED] who each submitted an Application to Register Permanent Residence or Adjust Status (Form I-485), under Section 13 as derivative dependents of the applicant. The director issued separate decisions to each of the dependents denying their applications. The dependents have not filed a Form I-290B, Notice of Appeal or Motion, to appeal the director's decision.

On April 10, 2013, the applicant submits a Form I-290B, Notice of Appeal or Motion, an additional statement, country condition information on El Salvador and other documents in support of the appeal.

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

¹The 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).

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 record reflects that the applicant was admitted into the United States on May 3, 2005, in a G-1 non-immigrant status and thereafter served as [REDACTED] Washington, D.C. until his status was terminated by the U.S. Department of State on February 1, 2010. The applicant filed the Form I-485 application on May 31, 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 May 31, 2010.

The issues before the AAO in the present matter are, therefore, whether the record establishes that the applicant has compelling reasons that preclude 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. 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).

Upon a *de novo* review of the record, the AAO concurs with the director's determination that the applicant had not established 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).

In a statement dated January 28, 2011, which the applicant submitted in support of his application, the applicant stated that he served as the Director of the State Intelligence Organization of El Salvador (OIE) from June 1999 to December 2004, under the previous administration in El Salvador. The applicant stated that in this position, he “managed the relationship” between the government of El Salvador and the U.S. Central Intelligence Agency (CIA). The applicant indicated that he met and talked on the phone with the station Chief of the CIA in El Salvador or his deputy to discuss issues of common interest, including progress on intelligence operation. The applicant claims that during many of his meetings with the CIA Section Chief, they discussed and explored the links between some members of the [REDACTED] leadership in El Salvador, the [REDACTED]. The applicant also claims that his office monitored and investigated the travels to Cuba of a very-well-known Salvadoran journalist, [REDACTED] who is the current [REDACTED] of El Salvador. The applicant indicated that he gathered information on this journalist as well as other

members of the [REDACTED] who are now part of the current Salvadoran Administration. The applicant claimed that he was terminated from his diplomatic position in Washington D.C. because of his work at the [REDACTED] and his affiliation with the prior Salvadoran Administration and the [REDACTED] party.

The applicant also asserts that some prominent members of the past government and businessmen, including a former president of El Salvador, are being harassed and persecuted in El Salvador. The applicant submitted newspaper articles in support of his assertions.

At his adjustment of status interview on February 3, 2011, the applicant stated that his employment was terminated "basically because I was not a member of the political party in power: [REDACTED]. Probably also because I was a member of the cabinet in a previous government from 1999-2004." The applicant also stated that he believes that he would be subjected to persecution if he returned to El Salvador but did not state why he would be targeted.

On appeal, the applicant asserts that he was terminated from his position for political reasons. The applicant states that on February 1, 2010, he was notified by the Salvadoran [REDACTED] that he was being terminated from his diplomatic post in Washington, D.C. for "lack of political trust." The applicant claims that he was politically persecuted "for not sharing the communist ideology of the ruling party." He states that he is afraid to go back to El Salvador because the current director of [REDACTED] has access to all the information gathered during his tenure as the director of [REDACTED], including compromising information about his close link to the U.S. Embassy in El Salvador, the CIA and other foreign intelligence agencies. The applicant claims that the "compromising" information against him will be used to harass and harm him. The applicant declares "these fears were further confirmed in June and July 2010, when several former senior officers of past administrations, businessmen and even a former Attorney General were harassed by security forces and their houses raided supposedly seeking illegal guns, drugs and nondescript evidence of wrong doing." The applicant also cited a case of his friend, [REDACTED], a former Director of the National Public Security Council, with whom he had close personal and professional ties, whom members of the security forces attempted to harass on false charges that his wife's car was loaded with drugs.

The applicant expressed his desire to remain in the United States with his family because his life and that of his family are at risk in El Salvador because of his work at the [REDACTED]. The applicant declares, "the government of El Salvador acts in a sort of duality: on one hand is the president and close friends, who have been somewhat moderate and pragmatic, but on the other hand is the [REDACTED] whose radical ideas and ties with [REDACTED] still represents a danger for people like me that have been singled out as 'untrustworthy' for the country." The applicant declares that if he and his family were to return to El Salvador, that they would be harassed, persecuted or killed by the faction of the EL Salvador government that is controlled by members of the [REDACTED].

In support of the appeal, the applicant submits newspaper articles, on-line information on the [REDACTED] in El Salvador, and a photocopy of [REDACTED] purporting to show the reason the applicant was removed from his diplomatic position.

The AAO has reviewed the applicant's statements, country condition information on El Salvador, newspaper articles and other documentation submitted by the applicant in support of his application. The applicant, acknowledged that there have been no politically motivated assassinations in recent years that he knows of, but that the country continues to be very violent and that anybody could be killed for any reason; any murder, even a politically motivated one can easily go undetected under the "general violence" category. The AAO notes the applicant's observations that El Salvador 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 further notes the applicant's apprehension of returning to El Salvador due to the violence and insecurity in the country. However, the record in this matter does not present any specific evidence that the applicant or his family would be targeted due to political changes in the country 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. The applicant has not submitted substantive evidence that he or his family are at greater risk of harm because of his past government employment, political activities or other related reasons. The applicant's claim that he was "fired" from his position and would be targeted for harassment of harm by the current administration because of his prior position as the director of OIE or his work as a representative of El Salvador to the Organization of American States in Washington, D.C. are not substantiated by the evidence of 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 persecuted because of his political affiliation with the party.

The applicant has presented no objective and credible evidence to establish that he and his family will be 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. The applicant has failed to demonstrate that he and his family are at greater risk of harm because of his duties and responsibilities representing the government of El Salvador at the Organization of American States in Washington, D.C. We acknowledge the applicant's desire to remain in the United States so as to provide better living conditions for his family, and that the applicant's family may encounter some difficulties adjusting to living in El Salvador after a prolonged period of absence from the country. However, the general inconveniences and hardships associated with relocating to another country are not compelling reasons 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 he has failed to provide compelling reasons that prevent his return to El Salvador. See Interagency Record of Request (Form I-566). As such, the AAO finds that the applicant has 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 that

prevent 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.