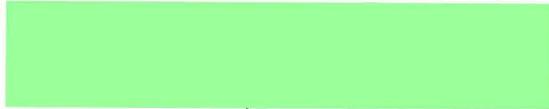




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 21 2014** OFFICE: NATIONAL BENEFITS CENTER



IN RE:



APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

ON BEHALF OF APPLICANT:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the 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 Nigeria who is seeking to adjust her 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)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

The director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent her return to Nigeria. The director noted that the Department of State issued its opinion on January 05, 2013, advising that it could not make a favorable recommendation in this case as the applicant had not established that compelling reasons prevent her return to Nigeria. *Decision of National Benefits Director*, dated January 25, 2013.

On appeal, counsel for the applicant asserts that the applicant has established compelling reasons that prevent her return to Nigeria. Counsel contends that the director failed to adjudicate the application within a reasonable period.¹ Counsel submits a brief and some of the same evidence already in the record.

As stated in the director's January 25, 2013 denial, the single issue in this proceeding is whether the applicant has established compelling reasons preventing her return to Nigeria.

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

¹ It is noted that counsel also states that a copy of the record of proceedings obtained from a FOIA request did not contain the January 05, 2013 opinion of the Department of State referenced in the director's denial, and that the record does not establish what documentation the director provided to the Department of State. However, the director clearly delineated that the applicant had failed to establish that compelling reasons prevent her return to Nigeria, and only noted that the Department of State advised that it could not make a favorable recommendation in this case as the applicant had not established compelling reasons that prevent her return to Nigeria. Counsel also states that the applicant had submitted an Asylum Application, Form I-589, which was not receipted and has not been adjudicated. However, even if the applicant filed a Form I-589, the status of any such application is not within the scope of the AAO's review in this matter which is limited to the Section 13 adjustment application based on the record as constituted. See 8 C.F.R. § 103.2(b)(16)(ii).

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 are 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.

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 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).

A review of the record established the applicant's eligibility for consideration under Section 13 of the 1957 Act. The applicant last entered the United States on April 21, 1995 as an A-2 non-immigrant to [REDACTED]

[REDACTED] She was employed in a semi-diplomatic position until April 2002. Her status was terminated as of April 17, 1995. The applicant applied for adjustment of status on August 9, 1996. Per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States pursuant to 101(a)(15)(A)(i) of the Act but did not hold diplomatic status at the time she filed this application for adjustment on August 9, 1996.

The record shows that the applicant was admitted under section 101(a)(15)(A)(i), of the Act. The record establishes that the applicant performed diplomatic or semi-diplomatic duties as a Consular

Information Officer. The AAO concurs with the director's determination that the applicant established that she performed diplomatic or semi-diplomatic duties.

Upon review of the applicant's sworn statement before a USCIS immigration officer on October 15, 2008, the applicant's July 9, 1996 affidavit, and her assertions on appeal, as well as the current country conditions in Nigeria, the AAO finds that the applicant has not provided compelling reasons related to political changes in Nigeria that render her as a foreign representative "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which accredited her. The record does not include evidence showing that the applicant is at greater risk of harm because of her specific past government employment, political activities or other related reasons, including her employment as a [REDACTED]. It is noted that by her sworn testimony before an immigration officer on October 15, 2008, and the applicant's July 9, 1996 affidavit, the applicant stated that compelling reasons prevent her return to Nigeria because she feared repercussion from the government when she returned to the country in 1995 since the government in power in Nigeria at the time sought to punish her for her activities in the United States. She stated that the Nigerian government that was in power had accused her of causing the government embarrassment as a result of a 1994 CBS "[REDACTED]" television broadcast that was critical of the Nigerian government. The applicant described various incidents during her employment as a [REDACTED] wherein she states that she had been falsely accused of various acts which she states were designed to discredit her as an opponent of the Nigerian government. The applicant stated that on April 20, 1995 she left Nigeria because she was advised to leave the country to avoid being harmed by the government. Also, on appeal, the applicant states that it would be disruptive to return to Nigeria because she and her family are settled in the United States since 1995. Though disruption of the applicant's life and that of her family are unfortunate, there are no humanitarian exceptions to the requirement that the applicant demonstrate compelling reasons based on her specific past government experience prevent her return to Nigeria.

In her 1996 statement the applicant states that she was discriminated against by the Nigerian government on account of her ethnicity while she was employed by the government in Nigeria. There is no indication in the documentation provided that the applicant would be singled out or targeted by the government of Nigeria. Since 1995, the Nigerian government has changed several times and there is no evidence of record to establish that the present Nigerian government targets diplomats of the former Nigerian government under the [REDACTED]. We note that although the applicant's feeling of fear may be sincere, it is speculative and no evidence has been presented that the applicant or her family would be targeted by the government of Nigeria.

As set forth in the director's decision, 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. Desiring to establish a life in

the United States is not a compelling reason under Section 13. Similarly, the general hardship of relocating to another country is not a compelling reason under Section 13.

The documentation provided does not present compelling reasons that prevent the applicant from returning to Nigeria. As noted above, the government of Nigeria has changed several times since 1995 when the applicant claimed that the government in power at the time sought to punish her. There is no evidence of record to establish that the applicant would be at risk in Nigeria, considering the regime the applicant feared has long been out of power.

The applicant has failed to meet her burden of proof in this regard. As the applicant has not established that there are compelling reasons that prevent her return to Nigeria, the question of whether adjustment of status would be in the 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. She has failed to establish that there are compelling reasons preventing her return to Nigeria. Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that she is eligible for adjustment of status. The applicant has failed to meet that burden.

ORDER: The appeal is dismissed. The application remains denied.