



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **MAR 25 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,

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

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 Indonesia 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 (1) had no qualifying position because he did not perform diplomatic or semi-diplomatic duties; and (2) had failed to establish that compelling reasons prevent his return to Indonesia. 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 no qualifying status and that the applicant presented no compelling reasons why he cannot return to Indonesia. *Decision of the Director*, dated March 13, 2013.

On appeal, the applicant asserts that the director's decision to deny his application was unreasonable, arbitrary, and capricious. The applicant states "Sec. 101 of the Act defines my status as diplomatic, being admitted as a G1, and the Service should not define for a Mission what duties are diplomatic." The applicant also asserts that he has provided evidence of compelling reasons that prevent his return to Indonesia.

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>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 Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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).

Upon a *de novo* review of the evidence of record, the AAO concurs with the decision of the director that the applicant has no qualifying status. He has not demonstrated that he performed diplomatic or semi-diplomatic duties as required by 8 C.F.R. § 245.3. At his adjustment of status interview on April 17, 2012, the applicant testified under oath that he was admitted into the United States on a G-1 nonimmigrant visa and served as a Telephone Operator for the [redacted] to the United Nations in New York from May 13, 1996 until his status was terminated on May 31, 1999. The applicant testified that his official title was "Telephone Operator". He described his duties as "most of the time I was a telephone operator, but if they needed a driver, then I would drive." The applicant further testified that his duties were not considered diplomatic or semi-diplomatic in nature.

The AAO notes that 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 a G-1 nonimmigrant status and served as a telephone operator and/or driver for

[REDACTED] to the United Nations. The record does not demonstrate that the applicant had any formal advisory or decision-making role or that he was 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 telephone operator and sometimes as a driver for the Indonesian Mission to the United Nations in New York. The record does not show that the applicant had any formal advisory or decision-making role at the Mission of Indonesia to the United Nations or that he had authority to represent Indonesia before any state or federal government agencies of the United States or other international governments. Therefore, based on the evidence of record, the applicant has failed to demonstrate that he 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 Indonesia or 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.