U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAR 25 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. 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 Colombia who is seeking to adjust his status to that of 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)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

The director denied the application for adjustment of status after determining that the applicant had failed to establish compelling reasons that prevent his and his family's return to Colombia. The director also noted that on September 28, 2012, the U.S. Department of State issued its opinion recommending that the adjustment of status of the applicant be denied because the reasons the applicant indicated that preclude his return to Colombia are not related to the applicant's diplomatic duties in the United States. *See Director's Decision,* dated March 13, 2013.[1]

The director also denied the application of the applicant's spouse who submitted an Application to Register Permanent Residence or Adjust Status (Form I-485), seeking to adjust her status under Section 13 of the Act as a derivative dependent of the applicant. The director issued a separate decision denying the application. The record does not reflect that the applicant's spouse filed an appeal of the director's decision denying her application.

On appeal, counsel for the applicant submits the following documents in support of the appeal: a brief, additional statement from the applicant and his spouse, a Spanish language newspaper, with no accompanying English translation, [2] and copies of newspaper articles in the Spanish language with accompanying English translation, which the applicant claims were articles he published in 2002 and 2003 when he was residing in Colombia.

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[1] The Notice of Decision (NOD) on the record bears a decision date stamp of March 13, 2013. The decision date stamped on the Form I-485 application bears a denial date stamp of April 29, 2013. Other documents from United States Citizenship and Immigration Services (USCIS) show that the Form I-485 was denied on April 29, 2013. The denial notice of the application's dependent bears a decision date stamp of April 29, 2013. Therefore, based on the record, the AAO will accept the decision date of the applicant's adjustment of status application as April 29, 2013. As such, the applicant's Form I-290B, Notice of Appeal or Motion, dated June 3, 2013 is timely. The AAO will decide the appeal on its merit.

[2] Regarding the Spanish-language newspaper submitted on appeal, the regulations at 8 CFR section 103.2(b)(3) provides that any document containing foreign language submitted to (USCIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Because the applicant failed to submit certified translations of the document, the AAO cannot determine whether the evidence supports the applicant's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

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.[3]

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.
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> (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

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[3] 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).

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 legislative history of Section 13, including the 1981 amendment adding the term "compelling reasons," 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.

What Section 13 requires 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. The AAO finds that a review of the totality of the Section 13 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.

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 December 8, 2003, in an A-1 nonimmigrant status and thereafter served as [redacted] in Miami, Florida, until his status was terminated by the U.S. Department of State on August 3, 2007. As [redacted] the applicant served as the official [redacted] at its Consulate in Miami from December 8, 2003 until terminated on August 3, 2007. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on November 15, 2007. 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)(A)(i) of the Act but no longer held that status at the time he filed his application for adjustment of status on November 15, 2007.

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 Colombia 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, (USCIS) is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

In an August 25, 2007 statement, which the applicant submitted in support of his application, the applicant stated that prior to his appointment as [redacted], he was the [redacted] in Magdalena, Colombia, of the program, [redacted] a social component

of [redacted], where he executed "a life and support project for the community of Magdalena, Columbia." The applicant stated that he designed and implemented activities and programs for young people in the area to help them express their feelings and desires for peace and to promote within them the spirit of reconciliation, love, respect for life, the environment, cohabitation, and most importantly to keep them alive and prevent them from joining the guerilla group or other paramilitary groups operating in the area. The applicant indicated that he published a weekly newspaper column in the El [redacted] The applicant also stated that his weekly column was entitled [redacted] and that he was also a part of the editorial staff of the newspaper. The applicant claimed that as a result of his activities on behalf of the young people and his newspaper publications, he was threatened and persecuted by individuals whom he believed wanted to pressure him to abandon his activities.

In an August 25, 2007 statement signed by the applicant and his spouse, the applicant stated "at the end of the period of appointment of the diplomatic assignment, I returned to [redacted], Colombia to live together with my family, a return which was made with much discretion and with positive expectations; but the circumstances had not changed, I was threatened and detained against my will, my life along with my family's remained vulnerable and at an imminent risk. They made an attempt against my freedom and security, for us, living in Colombia is impossible, it is not an option within a reasonable time frame." The applicant indicated that he filed complaint of the harassment with the proper authorities in Colombia. The applicant also indicated that other members of his family were threatened and harassed.

In a Sworn Statement dated April 21, 2008, the applicant stated the following as reasons he fears returning to Colombia: "I worked for the Colombian government for 18 years and as a journalist during which time I freely expressed my ideas and I didn't have any trouble until 2002 when I began working with '[redacted]' pertaining to children and the war with terrorist 'guerellar' and 'paramilitares.' As a result of my work and ideas me and my family have been threatened by the terrorist organizations." In an August 11, 2011 Sworn Statement, the applicant indicated that the constant and permanent threats and harassment made against his life are the compelling reason that prevent his return to Colombia. The applicant indicated that before he served as the [redacted] In this position, he provided social assistance to families of remote towns which were most vulnerable to the "necessities of life and where these terrorist ([redacted] were mostly located. . . help maintain younger kids in school in order to keep them off the targets of the terrorist groups that were trying to recruit them . . . I worked for the [redacted] a non-profit organization which focus was to teach children to live in a socially and learn about the and how to save it. This way the children will be less likely to be brain washed to join the [redacted]. . . I also worked for a local newspaper called '[redacted] as a columnist where I write an editorial to inform people of what was really happening in Colombia and my political views." The applicant claimed that as a result of all these activities, he was constantly threatened by the guerrillas and the paramilitary groups.

On appeal, the applicant states that his source of fear does not stem from his duties and responsibilities as [redacted] in Miami, but from his activities as a journalist and program

where he denounced the activities of the guerillas and the paramilitaries and in educating young people not to join the guerrillas and for providing for their families so that they will not be dependent on these groups. The applicant declares "it was not General Comptrollership of the Republic, it was not [redacted] that was responsible for the threats, the persecution, and holding me against my will: it was my activities, opinion, professional journalistic writings and programs developed afterwards that took me to the cruel, absurd and violent persecution and the horror of threat." The applicant indicates that although some political changes have occurred in Colombia, threats against journalists persist. The applicant fears that his life and his family's lives are still at risk if he were to return to Colombia because of the work he did as a journalist in Colombia more than ten years ago.

On appeal, counsel asserts that the applicant and his family will be exposed to serious harm and that there are "very real and serious death threats" against the applicant and his family if they returned to Colombia. Counsel claims that the threats against the applicant and his family began after the applicant started denouncing the actions of the guerrilla and paramilitary forces in rural territory of Colombia and the devastating effects and consequences on the lives of children, in particular. *Counsel's Brief at p.3.* Counsel also claims that the applicant's refusal to cooperate with an attempted extortion by the guerrillas when he contemplated running for the governor of his home state, "triggered lasting consequences that continue to haunt [the applicant] to this day in the form of death threats aimed at him and his family members," and that the applicant "remains trapped, essentially, in the United States against his will and has sacrificed time with his closest family members in order to preserve his life." *Counsel's brief at p.3.*

The AAO has reviewed the applicant's statements, counsel's brief on appeal and other documentation submitted in support of the application and finds them insufficient to establish compelling reasons that prevent the applicant from returning to Colombia. In the various statements submitted in support of his application and on appeal, the applicant consistently indicated that the reasons that prevent his return to Colombia are not related to his duties and responsibilities as [redacted] in Miami, but are related to his prior work as a journalist who exposed the atrocities being committed by the leftist guerrilla and paramilitary groups in Colombia, his work at the [redacted] of Colombia and as the coordinator of the [redacted]. The applicant stated that part of his responsibilities was to assist families in areas controlled by these groups as well as dissuade young people from joining the guerilla groups in Colombia. The applicant indicated that he was physically threatened and harassed and that he took on the position of [redacted] in 2003 and left Colombia in 2003 to save his life and that of his family.

The AAO acknowledges the lack of security in Colombia and the attacks on journalists by the [redacted] and other paramilitary groups. We also acknowledge the applicant's apprehension and fear of returning to Colombia given the level of insecurity in the country. However, the applicant has provided no evidence to establish that he is unable to return to Colombia due to the actions or inactions on the part of the government of Colombia because of his duties and responsibilities as [redacted] in Miami. Nor has the applicant provided credible and probative evidence to establish that he and his family will be specifically targeted by the [redacted] and other paramilitary groups in Colombia or by the government of Colombia because of his duties and responsibilities as [redacted] Counsel does not provide any evidence to

establish that the applicant as a returning diplomat will be at risk of harm because of his services at the [redacted] Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)). Therefore, the evidence of record in this case is insufficient to establish that the applicant in his role as a returning diplomat would be at greater risk of harm because of his past government employment, political activities or other related reason.

Although the applicant may experience hardship if he returns to Colombia because of insecurity in the country, however, the evidence does not show that he is unable to return because of any action or inaction on the part of the government of Colombia or other political entity there. Likewise, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. It is also noted that the United States Department of State has recommended that the adjustment of status application of the applicant be denied because the reasons provided by the applicant that prevent his return to Colombia are not related to his position in the United States. *See* Interagency Record of Request (Form I-566). The AAO therefore concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to Colombia. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Colombia, the question of whether adjustment of status would be in the national interest need not be addressed.

The eligibility for relief under section 13 is limited and ineligibility for section 13 relief does not preclude the applicant from pursuing other benefits provided under the immigration laws of the United States. Accordingly, the AAO finds that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to Colombia for the purposes of Section 13. As the applicant has failed to demonstrate that there are compelling reasons that prevent his return to Colombia, 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 that preclude his return to Colombia. 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.