



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE:
MAY 12 2014

Office: NATIONAL BENEFITS CENTER

FILE:

[Redacted]

IN RE:

Applicant:

[Redacted]

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:

[Redacted]

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 Colombia 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)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(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 her return to Colombia. The director also noted that the U.S. Department of State issued its opinion on June 23, 2011, recommending that the application be denied because the applicant did not provide compelling reasons why she cannot return to her country. *Decision of the Director*, dated March 29, 2012.

The director also denied the application of the applicant's dependents [REDACTED] and [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 a separate decision denying each application. The dependents have not filed an appeal of the director's decision.

On appeal, counsel for the applicant asserts that the director's decision should "be in accordance to the political situation of Colombia at the time of the application, not the time of the decision making when number of years has passed." Counsel also asserts that the director did not give specific reasons for the denial of the application. Counsel submits a brief in support of the appeal.

The AAO will review all the evidence in the record including evidence submitted on appeal and will make 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 applicant was admitted to the United States on October 8, 2001, in an A-1 nonimmigrant status and thereafter served as Second Consul at the [redacted] in [redacted] Texas, until her diplomatic status was terminated on February 2, 2003. The applicant filed the Form I-485 application on April 3, 2003. 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 she filed her application for adjustment on April 3, 2003.

The issues before the AAO in the present case are, therefore, whether the record establishes that the applicant has compelling reasons that preclude her return to Colombia and that her 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 failed to establish compelling reasons that prevent her return to Colombia. 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 July 3, 2008 statement which the applicant submitted in support of her application, the applicant indicated the following as reasons she does not want to return to Colombia:

After living in [REDACTED] for a while I have realized there are better opportunities for my family and I. Also, my daughters were raised here and it’s where we have built our home.

At her adjustment of status interview on July 3, 2008, the applicant indicated the following as compelling reasons why she cannot return to Colombia:

I am working in [REDACTED] for the [REDACTED] an American Corporation. My daughter is raised in the United States and I have two grandsons born in the United States.

On appeal, counsel asserts "Service did not explain what evidence the Service has considered, or why the Service does not believe it was insufficient evidence to grant adjustment of status. . ." Counsel contends that the applicant is entitled to know what basic evidence was considered by the director and why the evidence was insufficient and that the applicant "must be given specific reasons under which she was denied per due process requirement of the U.S. Constitution . . ."

The AAO has reviewed the applicant's statements and counsel's brief on appeal and finds them insufficient to establish compelling reasons that prevent the applicant from returning to Colombia. The AAO acknowledges the applicant's desire to remain in the United States to continue her employment with an American corporation and to be close to her children and grandchildren, however, the applicant has failed to demonstrate that she is unable to return to Colombia based on compelling reasons related 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. The AAO also acknowledges that the applicant and her family may encounter difficulties adjusting to living in Colombia 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. The applicant has provided no credible and specific evidence to establish that she and her family are at greater risk of harm because of her past government employment, political activities, or other related reason. The applicant's desire to create a better life for her and her family in the United States is not a compelling reason under Section 13 of the Act. The evidence of record does not establish that the applicant is unable to return to Colombia because of any action or inaction on the part of the government of Colombia or other political entity there as required under Section 13.

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. In this case, the AAO finds that the applicant has failed to meet her burden of proof in demonstrating that there are compelling reasons that prevent her return to Colombia for the purposes of Section 13. As the applicant has failed to demonstrate that there are compelling reasons that prevent her return to Colombia, the question of whether her 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. She has failed to establish that there are compelling reasons that prevent her 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.