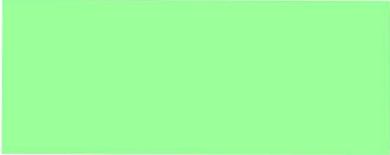


(b)(6)

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



DATE: **MAY 27 2014** Office: NATIONAL BENEFITS CENTER

FILE:

IN RE: Applicant:

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 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 Liberia 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 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)(G)(i).

The director denied the application for adjustment of status after determining that the applicant had failed to demonstrate compelling reasons that prevent his return to Liberia. The director also noted that the U.S. Department of State issued its opinion on June 19, 2013 recommending that the applicant’s request for adjustment of status in the United States be denied because the applicant presented no compelling reasons that prevent his return to Liberia. *See Director’s Decision*, dated September 19, 2013.

The director also denied the adjustment of status application of the applicant’s dependents. However, none of the dependents have filed an appeal seeking a review of the director’s decision. The AAO will only adjudicate the appeal by the applicant.

On October 18, 2013, counsel for the applicant submits a Form I-290B, Notice of Appeal or Motion. Counsel submits a brief, additional statement from the applicant, copies of statements and/or affidavits from witnesses residing in Liberia and the United States, copies of articles claimed to be authored by the applicant in 2011 and 2012, and country condition information on the treatment of journalists in Liberia in support of the appeal. Counsel asserts that the evidence on appeal will “demonstrate compelling reasons that prevent the return of the applicant and his family to Liberia.” Counsel also asserts that the brief will address changed circumstances, including political activities of the applicant “via articles published online and an online radio station, criticizing the current government in Liberia and calling for leadership change in Liberia. . .” Counsel claims that because of these anti-government activities, the applicant cannot safely return to Liberia. Counsel requests that the Form I-290B filed be considered as “a motion to reconsider and/or reopen under 8 C.F.R. § 103.3(a)(2)(iii).”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

¹ The record does not contain a decision by the AAO to reopen and reconsider. The AAO will accept the Form I-290B as an appeal of the director’s decision denying the Form I-485 application and will adjudicate the matter as such.

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 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).

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 he or she 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 applicant was admitted into the United States on May 3, 2005 and thereafter served as [REDACTED] in Washington, D.C. until his status was terminated by the U.S. Department of State on December 19, 2007. The applicant filed the adjustment of status application on April 6, 2008. Therefore, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(i) of the Act but no longer held that status at the time he filed the application for adjustment of status on April 6, 2008.

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 Liberia 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).

In a “summary of evidence” submitted by counsel in support of the applicant's Form I-485 application, counsel claims that the applicant is “under the direct threat of serious harm at the hands of Liberian security officials” if he returns to Liberia. Counsel asserts that the security forces will target the applicant for torture, assassination and/or human rights abuses if he returns to Liberia because (1) the applicant has been accused of being an enemy of the government by some factions within the Liberia security forces; (2) the applicant's family members in Liberia have been approached by security forces asking for the applicant's whereabouts; (3) the applicant was previously tortured by some officials within the security forces and some of the same officials continue to serve with the current government of Liberia; and (4) the applicant is a journalist who has criticized the government of Liberia and would be targeted for harm by the security officials in Liberia. Counsel claims the above as the compelling reasons why the applicant cannot return to Liberia.

In the various statements the applicant submitted into the record, the applicant stated that in May 2005, he was appointed by the [REDACTED] to serve as [REDACTED] in Washington D.C. The applicant asserts that his position was terminated in 2007 when the current government of Mrs. [REDACTED] first came into office because of false allegations made against him by the then Ambassador, [REDACTED]. The applicant claimed that the Ambassador falsely accused him of spying against the government of Liberia;

constantly passing out confidential and sensitive government information to the “enemies of the state” and the news media. The applicant further claimed that as a result, he was designated as an enemy of the state and that security officials in Liberia have been asking for his whereabouts and when he will be coming back to Liberia. The applicant also stated that his family in Liberia has been targeted and harried, that his older brother Mr. [REDACTED] was found dead under suspicious circumstances. The applicant stated that he cannot safely return to Liberia under these circumstances.

At his adjustment of status interview on November 13, 2008, the applicant completed a sworn statement before an immigration officer and indicated the following as the compelling reasons why he cannot return to Liberia:

I have been labeled as an enemy of the current government and targeted for extrajudicial retributions. My family is being threatened for my sake, with security men waiting to hurt me, and continuously making statements of threat about me.

On appeal, the applicant claims that he has been critical of the current government’s human rights record; has advocated for a change of government and that as a result of his criticism of the government, he and his family have been threatened and harassed. On appeal, counsel claims that the applicant’s life would be in danger if he returned to Liberia due to “his activities in speaking out against human rights abuses, torture, and extrajudicial violence occurring in Liberia.” Counsel asserts that the applicant has been accused of being an enemy of the government of Liberia, that the applicant continues to publically express his opposition to the current government by being critical of its human rights record, that the applicant’s family members in Liberia have been targeted and harassed by the government and that the security officials in Liberia are asking about the applicant’s whereabouts and when he will return to Liberia. Counsel contends that “these direct and particularized threats against [the applicant] and his family members constitute compelling reasons why [the applicant] cannot return to Liberia and his application of November 12, 2008 should have been approved by USCIS.” In support of these assertions, counsel refers to statements and affidavits from individuals in the United States and Liberia as evidence that the applicant and his family are targeted and harassed by the Liberian government and that the applicant cannot safely return to Liberia. Counsel also refers to country condition information on Liberia, newspapers and online news articles on Liberia in support of his claim that the applicant is at risk of harm by the Liberian government if he returns to Liberia.

The AAO has reviewed the applicant’s statements, counsel’s brief on appeal, country condition information and supporting statements and affidavits from witnesses and finds them insufficient to establish compelling reasons that preclude the applicant from returning to Liberia.² We note that contrary to counsel’s assertions, the record is devoid of credible evidence demonstrating the applicant and his family have been targeted and harassed by the current government of Liberia. The record does not contain sufficient documentary evidence demonstrating that the applicant is at greater risk of harm because of his past employment, political activities or other related reasons. The applicant claims that

² The AAO conducts 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).

the current government of Liberia terminated his employment because of false allegations made against him as an “enemy of the state” who has “constantly been passing confidential and sensitive government information to the ‘enemies of the state’ and the news media.” The applicant also claims that he has criticized the current government of Liberia and that as a result, he and his family have been targeted and harassed and that his older brother died under suspicious circumstances, which he believes was because of their relationship. However, the applicant does not provide substantive, objective, and credible evidence demonstrating that he and his family are at greater risk of harm because of his past government employment, political activities or other related reasons. Furthermore, the applicant has presented no evidence documenting the death of his brother, that the government of Liberia is responsible for his brother’s death and that his brother’s death is related to his past employment with the government of Liberia, his political activities or other related reasons. 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)).

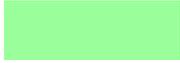
We note that the witness statements and/or affidavits are based on what the applicant recounted to the authors and will therefore be accorded little or no evidentiary weight. By the same token, the country condition information submitted into the record does not demonstrate that the applicant and his family have been targeted by the Liberian government based on the applicant’s employment with the Liberian government, political activities or other related reasons. Accordingly, the AAO finds that the applicant has failed to meet his burden of proof in establishing compelling reasons that prevent his return to Liberia.

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 Liberia for the purposes of Section 13.³ As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Liberia, 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 Liberia. 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.

³ It is also noted that the U.S. Department of State has recommended that the applicant’s request for adjustment of status be denied because the applicant has presented no compelling reasons that preclude his return to Liberia. *See* Interagency Record of Request (Form I-566).

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NON-PRECEDENT DECISION

ORDER: The appeal is dismissed.