



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: Office: NATIONAL BENEFITS CENTER FILE: [REDACTED]

NOV 03 2014

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:

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 Director, National Benefits Center, denied the application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen. The AAO is reopening this matter, *sua sponte*, for purposes of issuing a new decision for the record. The appeal will be dismissed.

The applicant is a native and citizen of Cameroon, who is seeking to adjust her 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 the dependent child of 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 demonstrate that compelling reasons prevent her return to Cameroon. The director also noted that on February 19, 2013 the U.S. Department of State issued its opinion recommending that the adjustment of status application of the applicant be denied because the applicant presented no compelling reasons why she cannot return to Cameroon. *See Decision of the Director*, dated March 8, 2013. It is noted that the U.S. Department of State’s opinion is a recommendation and not binding on the AAO’s *de novo* authority to review a case.<sup>1</sup>

The AAO stated in its dismissal that a review of the record established that compelling reasons prevent the applicant from returning to Cameroon. However, we dismissed the appeal after determining that the applicant had failed to establish that her adjustment of status would serve U.S. national interest, as required for adjustment of status under Section 13 of the 1957 Act.

On August 25, 2014, we notified the applicant that we are reopening the matter on our own motion, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), for purposes of issuing a new decision to correct the record. We notified the applicant that we have determined, upon further review of the record, that we erroneously stated in our dismissal that we found that the record established the applicant’s eligibility for consideration under Section 13 of the 1957 Act; that, the record demonstrates that compelling reasons prevent the applicant from returning to Cameroon; and, that the evidence submitted on appeal was sufficient to overcome the U.S. Department of State’s opinion of February 19, 2013, recommending that her request for adjustment of status be denied because she presented no compelling reasons why she is unable to return to Cameroon. We noted that upon further review, there is no evidence of record that the applicant would be “left homeless and stateless” as a consequence of “Communist and other uprisings, aggression, or invasion” that have “wiped out” her government. Accordingly, the AAO found the record insufficient to demonstrate that compelling reasons prevent the applicant from returning to Cameroon.

The applicant was permitted a period of 30 days in which to submit a brief. The applicant was notified that if she did not wish to submit a brief, she may waive this 30-day period in writing and fax the waiver to the AAO. In response, counsel for the applicant submits a brief.

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<sup>1</sup> 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).

On appeal, counsel for the applicant asserted that the director erroneously concluded that the applicant failed to establish "compelling reasons related to political changes in Cameroon that rendered diplomats and foreign representatives 'stateless or homeless' or at risk of harm." Counsel also asserted that although the applicant included information about her medical condition which may not have been relevant to Section 13, the director failed to consider and give credence to the evidence presented by the applicant of her father's summary arrest and incarceration by the government of Cameroon. Counsel contended that "the surveillance, summary arrest, and other mistreatment to which the applicant's father was subjected to by a hostile government constitute precisely the kind of 'compelling' reasons contemplated by congress." See *Form I-290B, Notice of Appeal or Motion*, dated April 5, 2013.

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 Attorney General 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 Attorney General 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 Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

8 U.S.C. § 1255(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).

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. 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 first issue in this proceeding is whether the record establishes the applicant's eligibility for consideration under Section 13 of the 1957 Act.

Further review of the record reveals that at the time the applicant filed her adjustment of status application on October 21, 2009, she was in A-2 status and employed by the [REDACTED]. The record of proceedings reflects that the applicant first entered the United States in April 1994, in A-1 nonimmigrant status as the derivative dependent child of the [REDACTED] and the [REDACTED] until he was recalled [REDACTED]. The U.S. Department of State terminated Mr. [REDACTED] status on [REDACTED]. The AAO stated in its November 6, 2013 dismissal decision that the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(i) of the Act and no longer held that status at the time she filed the application for adjustment of status on October 21, 2009.

The record reflects, however, that on February 13, 2009, the applicant was issued an A-2 visa as an "ADMIN AND TECH STAFF" of the [REDACTED] that, on October 11, 2009, the applicant was admitted into the United States as an A-2 non-immigrant; and, that she subsequently departed the United States and was again admitted into the United States as an A-2 non-immigrant, on January 12, 2010. *See Form I-94, Departure Record.*

The record also reflects that on her Biographic Information, Form G-325A, dated June 19, 2009, which the applicant submitted in support of her application for adjustment of status filed on October 21, 2009, she indicated that she had been employed by the [REDACTED], as "Administrative Staff" since August 2005, and that she *continued* to be employed in that capacity at the embassy. As noted above, while her adjustment application was pending the applicant departed the United States and was again admitted as an A-2 non-immigrant, on January 12, 2010.

In his response to our August 25, 2014 notice, counsel does not dispute that on February 13, 2009, the applicant was issued an A-2 visa as an "ADMIN AND TECH STAFF" of the [REDACTED] and that at the time the applicant submitted her adjustment application she was employed by the [REDACTED] as "Administrative Staff" since August 2005, and that she *continued* to be employed in that capacity at the embassy. Counsel contends that the applicant's eligibility to apply for adjustment under section 13 is based on the A-1 nonimmigrant status she had acquired as the dependent child of [REDACTED] and, as an administrative and technical staff member the applicant was not employed in a diplomatic or semi-diplomatic capacity, she is nevertheless still eligible to apply for section 13 relief because, at the time the applicant filed her adjustment application, her A-1 status she has acquired as a dependent of [REDACTED] had been terminated.

Contrary to counsel's contention, the requirements of section 13(a) of the 1957 statute limits eligibility to apply for adjustment of status under section 13 to aliens who were 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, and who has failed to maintain a status under any of those provisions. Clearly, section 13(a) does not contemplate eligibility to apply for adjustment under section 13 where an applicant, as in this case, was admitted to the United States as a nonimmigrant under the provisions of section 101(a)(15)(A)(ii) of the Act, and who maintained that status at the time of filing her adjustment application under section 13. Therefore, as the applicant was in valid A-2 status and was maintaining her A-2 status as an employee of the [REDACTED] at the time she filed her adjustment application, she does not meet the requirements of section 13(a) of the 1957 statute.

The remaining issues before the AAO in the present case are whether the record establishes that the applicant has compelling reasons that preclude her return to Cameroon and that her adjustment of status would serve U.S. national interests.

The record contains statements from the applicant detailing reasons she considers compelling as to why she cannot return to Cameroon. The applicant states that the evidence shows that her life and liberty will be in jeopardy if she were to return to Cameroon. She states that her father, [REDACTED] to respond to [REDACTED]

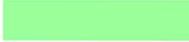
various inquiries regarding the failed purchase of an aircraft for the president of the country. The applicant indicated that her father was arrested shortly after he returned to Cameroon on what the applicant describes as a trumped-up charge of embezzlement; and, that her father has remained in jail since then. The applicant also presented evidence to support her claim that her mother was harassed by government officials when she visited Cameroon in 2011. The applicant asserts that the Cameroon government targeted her father for political reasons, and states that country condition information supports her belief that her father was targeted for political reasons.

On motion, as on appeal, counsel reiterates the applicant's fear that her father was arrested and jailed by the government of Cameroon for political reasons. He asserts that in addition to the fact that the applicant's father, [REDACTED], was summarily arrested and continued to remain in jail, the family home in [REDACTED] Cameroon, was monitored and then ransacked; the night guard was badly beaten up and then disappeared; and, her father's personal documents were stolen. Counsel asserts that the fact that the applicant had difficulty extending her passport when she traveled to Cameroon in 2011, and that the applicant experienced difficulty in trying to board a flight out of Cameroon in 2011, is related to the applicant being considered "*a persona non grata by segments of the government.*" In support of the appeal, counsel submits a copy of a July 2010 article by the *Washington Diplomat* on the arrest and the continued detention of the applicant's father in prison. The record also contains a copy of a statement from the Cameroon Embassy accusing the applicant's father of participating in "anti-patriotic acts" and for attempting to "tarnish the reputation of Cameroon in the United States; and, a copy of a February 2010 letter addressed to the President of Cameroon, Paul Biya, accusing the applicant of plotting to assassinate the president. Also in the record is a July [REDACTED] article from [REDACTED] English edition: "[REDACTED]

[REDACTED] and a September [REDACTED] article from the same news source, [REDACTED]

According to counsel, these articles confirm President Biya's intent of silencing his opponents, including the applicant's father, by arresting and jailing them under the so called anti-corruption campaign "Operation Sparrow Hawk."

There is no dispute that the present government of Cameroon is the same government that has been headed by President Paul Biya since November 1982. It is the same government of Cameroon the applicant's father [REDACTED] and to which he returned after his recall. Even if, as the applicant claims, her father was arrested and detained based on an anti-corruption campaign, allegedly designed by President Paul Biya, as a subterfuge for silencing political opponents, though unfortunate, does not establish that the applicant would be "left homeless and stateless" as a consequence of "Communist and other uprisings, aggression, or invasion" that have "wiped out" her government. The record lacks evidence to establish that the applicant has been rendered stateless or homeless by political upheaval, hostilities, etc., and is thus *unable* to return to and live in her country. The AAO finds the evidence of record insufficient to demonstrate that compelling reasons prevent the applicant from returning to Cameroon. The applicant has failed to meet her burden of proof in this regard.



With regard to the second prong of section 13(b) of the 1957 Act, which requires the adjustment of the alien to serve the national interest, we note that the applicant has addressed this issue – how her adjustment of status would serve the U.S. national interest. For the reasons discussed above, the applicant has failed to demonstrate that she is unable to return to Cameroon because of compelling reasons, and therefore is not eligible for adjustment of status under Section 13. As the applicant has not established that there are compelling reasons that prevent her return to Cameroon, we need not address the question of whether adjustment of status would be in the national interest.

For the reasons discussed above, we find that the applicant is not eligible to apply for adjustment of status under section 13, and that she has failed to establish that there are compelling reasons preventing her return to Cameroon. As discussed above, eligibility for relief under section 13 is limited. Ineligibility for relief under section 13 does not preclude the applicant from pursuing other benefits provided under the immigration laws of the United States.

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. Accordingly, the decision of the director will be affirmed.

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