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: NOV 0 7 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 (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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the National Benefits Center Director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of El Salvador and 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 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 application for adjustment of status after determining that the applicant had failed to establish that she performed diplomatic, or semi-diplomatic duties, and failed to demonstrate that compelling reasons prevent her return to El Salvador. The director noted that the Department of State issued its opinion on February 3, 2013, advising that it could not favorably recommend this case as the applicant did not perform diplomatic or semi-diplomatic duties. *Decision of Director,* dated May 2, 2014.

On appeal, counsel asserts that the director erred in denying the application. He contends that as a the applicant performed diplomatic or semi-diplomatic duties for the El Salvador Embassy, and that the applicant has established compelling reasons prevent her return to El Salvador. Counsel submits a brief and a letter from , dated June 14, 2014, in support of the appeal.

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.

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).

We now turn 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).

A review of the record established the applicant's eligibility for consideration under Section 13 of the 1957 Act. A review of the record established the applicant's eligibility for consideration under section 13 of the 1957 Act. The applicant last entered the United States with an A-1 non-immigrant visa on April 2, 2008, to work as a [redacted] for the Embassy of El Salvador in [redacted] Her status was terminated on June 18, 2010. The applicant applied for adjustment of status on December 2, 2010. Per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States pursuant to 101(a)(15)(A)(i) of the Act but did not hold diplomatic status at the time she filed this application for adjustment on December 2, 2010.

The first issue in this proceeding is whether the duties the applicant performed were diplomatic or semi-diplomatic in nature.

In the applicant's sworn statement before a USCIS immigration officer on May 20, 2011, she testified that she served as [redacted] and listed her duties as "Commercial affairs and Special Projects." In her statement submitted with her adjustment application, the applicant states that she was "in charge of Commercial Affairs and Special Projects" and that she made "significant contributions [towards] advancing commerce between the U.S. and El Salvador."

On appeal, counsel asserts that the applicant's job duties were diplomatic in nature as she represented the government of El Salvador in its dealings with the United States and other nations on projects regarding international trade and other issues. Counsel also asserts that the applicant's duties were diplomatic in nature because the applicant was issued an A-1 visa, the type of visa which is granted to diplomatic or semi-diplomatic officers and their families.

In support, the applicant submits a letter from , dated June 14, 2014. Mr. states that from 2001 to 2009, he had been employed in various capacities with the Foreign Affairs service of the Embassy of El Salvador in , and in He states that he knows the applicant to have been responsible for Commercial Affairs and Special Projects at the El Salvador Embassy in , from 2002 to 2010; that the applicant was responsible for representing El Salvador in dealings with United States authorities and government agencies, and authorities and agencies of other nations; that she participated in trade negotiations by drafting treaties and international trade agreements, such as the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR); that she was responsible for market research and reviewing legislation that could affect Salvadoran product exports to the United States, and organizing events to promote Salvadoran products and encourage investments in El Salvador; that she provided support to various Salvadoran government and private sector projects in the United States; that she gathered information on laws and agreements relevant to citizens of El Salvador residing in the United States and shared this information with other Salvadoran embassies and trained their staff based on the information she gathered. Mr. states that while he and the applicant were both in the Foreign Service he was in "constant communication with her regarding the projects she oversaw," and that he had "firsthand knowledge of [the applicant's] duties at the Salvadoran embassy.

Although the record shows that the applicant obtained classification under section 101(a)(15)(A)(i) of the Act, and no longer maintained that status at the time she filed for adjustment of status, the director determined that the applicant did not perform duties of a diplomatic or semi-diplomatic nature. We concur in this determination.

We acknowledge that the terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations and that the standard definitions of terms such as diplomat, diplomatic and diplomacy are varied and broad, and that, in practice, diplomacy may encompass many responsibilities and duties. We find, however, 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). Both section 101(a)(15)(A) of the Act and the Vienna Convention recognize that certain accredited employees or officials admitted to serve within embassies or other diplomatic missions are not "diplomatic" staff. The Vienna Convention refers to such personnel as administrative and technical staff, service staff, or personal servants. *The Vienna Convention on Diplomatic Relations,* Art. 1 (April 18, 1961), 500 U.N.T.S. 95. These "non-diplomatic" employees are nevertheless afforded the rights and immunities of diplomatic staff. *See Vienna Convention, supra,* Art. 37. In the matter of non-diplomatic employees who are admitted pursuant to section 101(a)(15)(G)(i) of the Act, USCIS must evaluate the position held and its attendant duties to determine whether the applicant is eligible under Section 13.

In this case, the record does not contain documentation detailing the nature, duties and responsibilities of the applicant as a for the Embassy of El Salvador in Based on the documentation provided, and the generalized descriptions from the applicant and Mr.

the applicant's duties entailed commercial affairs and related special projects. Counsel's assertion that the applicant performed diplomatic duties is not supported by the record and thus, not persuasive. The record does not contain documentation to provide sufficient information to enable the AAO to determine the extent of the applicant's duties and whether her duties were not purely technical in nature.

The letter from Mr. does not establish the applicant's duties as diplomatic or semi-diplomatic duties. Mr. gives generalized descriptions of the applicant's duties involving commercial affairs and special projects but he does not specify how these duties were of a diplomatic or semi-diplomatic nature, rather than of a technical or administrative nature. As such, the letter from Mr. lacks sufficient detail and cannot be given weight. Mr. letter is, therefore, not probative of the applicant's diplomatic or semi-diplomatic duties.

Without the necessary detail describing the applicant's actual responsibilities and duties, we are unable to conclude that the applicant's duties were diplomatic or semi-diplomatic duties rather than technical or administrative duties as the generalized descriptions indicate. 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 find that the applicant's duties, as a responsible for Commercial Affairs and Special Projects, were not diplomatic or semi-diplomatic in nature. We concur with the director's determination that the applicant has failed to establish that she performed diplomatic or semi-diplomatic duties.

The AAO now turns to the issue of whether the applicant has established compelling reasons that prevent her return to El Salvador.

Even if we were to deem the applicant's duties to be diplomatic or semi-diplomatic, the applicant has not established thatcompelling reasons prevent her return to El Salvador.

Upon review of the applicant's sworn statement before a USCIS immigration officer on May 11, 2011, the applicant's statement submitted with her adjustment application, counsel's assertions on appeal, as well as the current country conditions in El Salvador, the AAO finds that the applicant has not provided compelling reasons related to political changes in El Salvador that render her as a foreign representative "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which accredited her. The record does not include evidence showing that the applicant is at greater risk of harm because of her specific past government employment, political activities or other related reasons, including her employment as a Agent. The applicant states that she will be discriminated against in employment in El Salvador because she has been the "object of political and personal harassment from the " as a result of a lawsuit she filed against Mr. for

violations of the law. The applicant states that she fears repercussions from the government in El Salvador, she will be targeted as an opponent, and that she will be stigmatized by the government and she will not be able to obtain employment in El Salvador in the government or the private sector.

The applicant's fears do not amount to compelling reasons. We also note that although the applicant's fear may be real, it is speculative and no evidence has been presented that the applicant would be targeted by the government of El Salvador.

As set forth in the director's decision, 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. Voluntarily severing ties with El Salvador and establishing a life in the United States is not a compelling reason under Section 13. Similarly, the general hardship of relocating to another country is not a compelling reason under Section 13. The documentation provided does not present compelling reasons that prevent the applicant from returning to El Salvador.

The applicant has failed to meet her burden of proof in this regard. As the applicant has not established that there are compelling reasons that prevent her return to El Salvador, the question of whether adjustment of status would be in the national interest need not be addressed.

For the reasons discussed above, we find that the applicant is not eligible for adjustment under Section 13. She has failed to establish that there are compelling reasons preventing her return to El Salvador. 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.

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