



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **NOV 17 2014** Office: NATIONAL BENEFITS CENTER

FILE: [REDACTED]

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 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 is a native and citizen of Nigeria, 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 an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(G)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(ii).

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 Nigeria. The director also noted that on March 14, 2014, 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 Nigeria. *See Decision of the Director*, dated June 6, 2014.

On appeal, counsel for the applicant asserts that the director erroneously concluded that the applicant failed to establish "compelling reasons related to political changes in Nigeria that rendered diplomats and foreign representatives 'stateless or homeless' or at risk of harm." Counsel also asserts that the evidence provided establishes compelling reasons that prevent the applicant's return to Nigeria and asserts that due to the political activity of the applicant's parents, the applicant would be kidnapped and killed by political opponents. Counsel submits a brief and additional evidence. *See Form I-290B, Notice of Appeal or Motion*, dated July 30, 2014.

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.

Upon *de novo* review, a threshold issue in this proceeding is whether the record establishes the applicant's eligibility for consideration under Section 13 of the Act.<sup>1</sup>

A review of the record fails to establish the applicant's eligibility for consideration under Section 13 of the 1957 Act. The applicant entered the United States on August 29, 2011, in G-2 nonimmigrant status, to work at the Permanent Mission of Nigeria to the United Nations as an Advisor/Intern. The U.S. Department of State terminated the applicant's status as of March 30, 2012. The applicant filed her adjustment of status application on March 5, 2012. 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)(G)(ii) of the Act and still held that status at the time she filed the application for adjustment of status on March 5, 2012. For this reason, the application must be denied.

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

We now turn to the issue of whether the applicant has established that compelling reasons prevent her return to Nigeria.

Upon review of the applicant's sworn statement before a USCIS immigration officer, the applicant's January 4, 2012 affidavit, her assertions on appeal, as well as the current country conditions in Nigeria, and counsel's brief, the AAO finds that the applicant has not provided compelling reasons related to political changes in Nigeria 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 an Advisor/Intern. The applicant stated that compelling reasons prevent her return to Nigeria because she fears repercussion from the [REDACTED] rebels that target political figures in Nigeria. She states that because her parents are active in politics in Nigeria, the [REDACTED] targets her and her siblings and that these rebels kidnapped her mother and have been on rampages in the area where her parents reside.

On appeal, counsel reiterates the applicant's fear that due to various incidents involving the [REDACTED] rebels in Nigeria, the applicant would be at risk in Nigeria. Counsel contends, therefore, that the applicant has established that compelling reasons prevent her return to Nigeria.

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

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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).

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. Desiring to establish 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 applicant bases her claim on her fear of the [REDACTED] rebels who she states would target her because of her parents’ political activities. Though unfortunate, the circumstances the applicant could face with respect to the [REDACTED] rebels, or similar groups in Nigeria, do 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. We find the evidence of record insufficient to demonstrate that compelling reasons prevent the applicant from returning to Nigeria. 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 status 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 record fails to establish the applicant’s eligibility for consideration under Section 13 of the 1957 Act; and, the applicant has failed to demonstrate that compelling reasons prevent her return to Nigeria. She, therefore, is not eligible for adjustment of status under Section 13. Consequently, we find 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. The record fails to establish the applicant’s eligibility for consideration under Section 13 of the 1957 Act, and she has failed to establish that there are compelling reasons preventing her return to Nigeria. 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 dismissed. The application remains denied.