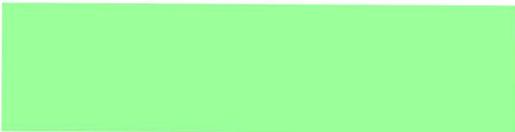
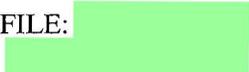


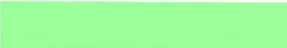


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **NOV 26 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 is a native and citizen of Angola 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 modified, 95 Stat. 1611, 8 U.S.C. § 1255b, as the spouse 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 establish that her husband performed diplomatic, or semi-diplomatic duties, and failed to demonstrate that compelling reasons prevent her return to Angola. The director noted that the Department of State issued its opinion on January 31, 2014, advising that it could not favorably recommend this case as the applicant’s husband did not perform diplomatic or semi-diplomatic duties, and did not present compelling reasons why she is unable to return to Angola. *Decision of Director*, dated May 5, 2014.

On appeal, counsel asserts that the director erred in denying the application. Counsel contends that as a [REDACTED] the applicant’s husband performed diplomatic or semi-diplomatic duties, and that the applicant has established that compelling reasons prevent her return to Angola. Counsel submits a brief and additional evidence 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.

(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 establishes the applicant's eligibility for consideration under Section 13 of the 1957 Act. The applicant last entered the United States on August 26, 2005 in A-2 non-immigrant status as the spouse of [REDACTED] who worked for the [REDACTED] in [REDACTED]. Her husband's status was terminated on January 1, 2008. The applicant applied for adjustment of status on August 26, 2013. 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 August 26, 2013.

The record does not establish that the applicant's husband performed diplomatic or semi-diplomatic duties. In the applicant's sworn statement before a USCIS immigration officer on November 22, 2013, she testified that her husband served as a [REDACTED]. In her statement submitted on appeal, she states that her husband regularly traveled with the [REDACTED] to places in Pennsylvania, New York, New Jersey, and Washington State on official business; attended meetings with the Ambassador and regularly wrote reports for the Ambassador to send to the government in Angola, and performed many other official duties "in direct support and furtherance of the official representative duties." The record does not include supporting documentation to establish that the applicant's husband's duties were diplomatic or semi-diplomatic in nature.

The AAO finds that the applicant's husband's duties, as a Translator, were not diplomatic or semi-diplomatic in nature. The AAO concurs with the field office 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 Angola.

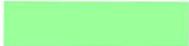
Even if we were to deem the applicant's husband's duties to be diplomatic or semi-diplomatic, the applicant has not established that compelling reasons prevent her return to Angola.

Upon review of the applicant's sworn statement before a USCIS immigration officer on November 22, 2013, the applicant's statement submitted on appeal, counsel's assertions on appeal, as well as the current country conditions in Angola, the AAO finds that the applicant has not provided compelling reasons related to political changes in Angola 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 husband. The record does not include evidence showing that the applicant is at greater risk of harm because of her husband's specific past government employment, political activities or other related reasons, including her employment as a Consular Agent. The applicant states that she cannot return to Angola because she would be subjected to abuse by her husband and that her husband would take away her children from her. Counsel contends that the applicant's situation, including her health condition, would leave her vulnerable to her husband if she returns to Angola.

We note that although the applicant's fear may be real, it is speculative and no evidence has been presented that the applicant or her family would be targeted by the government of Angola. We also note that the applicant's situation and her relationship with her husband, including her past experience with him, may be complex and may add difficulties to the applicant's circumstances if she returns to Angola. However, these fears do not amount to compelling reasons that prevent the applicant from returning to Angola.

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 Angola 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 Angola.

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 Angola, the question of whether adjustment of status would be in the 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. She has failed to establish that there are compelling reasons preventing her return to Angola. 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.