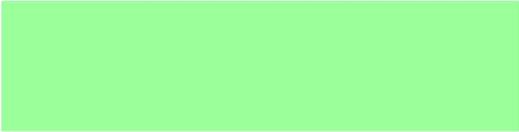




U.S. Citizenship
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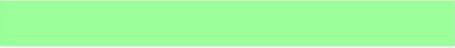
DATE: **SEP 03 2014** Office: WASHINGTON DISTRICT

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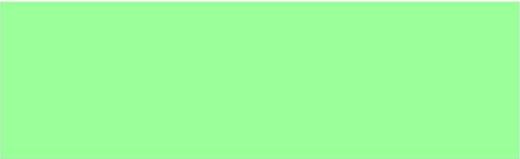
IN RE:

Applicant:



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 Field Office Director, Washington, District Office and was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The AAO granted a subsequently filed motion to reopen and reconsider and withdrew its previous decision in part and affirmed in part. The matter is again before the AAO on a motion to reconsider. The motion will be granted. The application will remain denied.

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 modified, 95 Stat. 1611, 8 U.S.C. § 1255b, as the derivative spouse of an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(A)(i).

The field office director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that her spouse had ever failed to maintain diplomatic status. Citing *Matter of Aiyer*, 18 I&N Dec. 98, (Reg. Commr. 1981), the director noted that a dependent family member seeking adjustment of status under Section 13 is ineligible if the principal alien did not fail to maintain diplomatic status. The director found the applicant ineligible for benefits under Section 13 of the Act because she was still maintaining diplomatic status at the time she filed for adjustment of status. *Decision of Field Office Director*, dated August 19, 2011.

On September 25, 2012, we concurred with the determination made by the field office director. The AAO also found beyond the decision of the director that the applicant had failed to establish compelling reasons that preclude her return to Cameroon – a mandatory requirement for adjustment of status under Section 13 of the Act. We dismissed the appeal accordingly.

The record shows that the motion is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon motion. On motion, counsel reasserts that the applicant is eligible for adjustment of status under Section 13 of the Act and that she has established compelling reasons that preclude her return to Cameroon.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

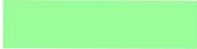
The motion to reconsider qualifies for consideration under 8 C.F.R. § 103.5(a)(3) because the applicant's counsel asserts that the director and the AAO made an erroneous decision through misapplication of law or policy.

We will reaffirm our determination that the applicant had failed to establish compelling reasons that prevent her return to Cameroon. We note that the applicant's stated reasons for not wanting to return to Cameroon are not compelling reasons under Section 13. As discussed in our previous decisions, 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.

On motion, counsel reasserts that the applicant cannot return to Cameroon because two of her children were diagnosed with autism. Counsel asserts that in Cameroon, persons with disabilities are seriously discriminated against and suffer from a lack of proper government assistance in providing adequate medical care and services. Counsel also asserts that country condition information on Cameroon indicates that the applicant's autistic children would face many challenges, including mistreatment and harassment rising to the level of persecution; and, that there is a scarcity of facilities and lack of public assistance for persons with disabilities. Counsel contends, therefore, that living with her two autistic children in Cameroon would result in serious psychological, emotional, and financial hardship for the applicant. Counsel presents these difficulties as compelling reasons that preclude the applicant from returning to Cameroon.

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. According to the American Heritage Dictionary, Fourth Edition, a dictionary cited by counsel for the meaning of the term "compelling," the plain meaning of the term "unable" is "lacking the necessary power, authority, or means." 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 keenly 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.

On motion, counsel contends that the AAO should apply a totality of the circumstances standard and find that the applicant has established compelling reasons that prevent her return because her children are autistic and that the children will be victims of mistreatment and harm as persons with disabilities; and, the children would suffer from a lack of adequate medical care and services as the government of Cameroon is "under resourced and ineffective in helping persons with disabilities."



These reasons, counsel contends, are not “general difficulties” but compelling reasons that prevent the applicant’s return to Cameroon.

We have delineated the requirements for Section 13 (discussed above) in our earlier dismissals. Again, we acknowledge the hardship to the applicant and her children if they return to Cameroon, given the serious medical condition of her children. However, as stated in our decisions, we reiterate that the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The evidence of record does not show that the applicant is unable to return because of any action or inaction on the part of the government of Cameroon or other political entity there as required under Section 13. We again note that the applicant has not submitted evidence showing that she is at greater risk of harm because of her spouse’s past government employment, political activities or other related reason. We conclude, therefore, that the applicant has failed to meet her burden of proof in demonstrating that compelling reasons prevent her return to Cameroon. As the applicant has failed to demonstrate that compelling reasons prevent her return to Cameroon, 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 compelling reasons prevent her return to Cameroon. 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 motion will be dismissed.

ORDER: The motion is granted. The AAO’s decision of March 31, 2014 is affirmed. The application will remain denied.