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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: JUL 30 2015

FILE : [REDACTED]  
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a small "f" or "r" written below it.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, National Benefits Center denied the application. 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 Fiji who is seeking to adjust his 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 demonstrate that compelling reasons prevent his return to Fiji. The director also noted that on April 29, 2014, the U.S. Department of State issued its opinion recommending that the applicant’s request for adjustment of status under Section 13 of the Act be denied because the applicant presented no compelling reasons why he is unable to return to Fiji. *Decision of the Director*, dated June 24, 2014.

On appeal, the applicant asserts that the director misinterpreted the law regarding Section 13 and applied an unreasonably high burden when analyzing his case. The applicant also asserts that the director erroneously concluded that the evidence he provided did not establish compelling reasons why he cannot return to Fiji. The applicant submits a brief and additional evidence in support of the appeal.

In an affidavit dated August 18, 2014, the applicant stated that his employment was prematurely terminated by the military government in Fiji because they accused him of being an opponent of the government and engaging in anti-government activities. The applicant indicated that the false accusation stemmed from hosting receptions for some Fiji nationals whom the government views as enemies of the state while he served as a diplomat. The applicant fears that if he returned to Fiji as ordered, he would be persecuted or tortured because the regime is known for its gross human rights violations and brutality toward perceived political opponents.

The applicant submitted photographs of himself and other citizens of Fiji whom the current government perceives as political opponents, including the former Prime Minister, who was deposed by the current regime, the former Ambassador, and former military officials; a letter from the current [REDACTED] to the United States dated August 26, 2013, indicating that the applicant had been accused of making “anti-government, malicious, discriminatory and derogatory remarks” and stating he had been unable to convince the Prime Minister of the falsity of the accusations; a letter from the [REDACTED] of Fiji, dated August 14, 2013, expressing his belief that the applicant will be at risk of harm as a suspected government opponent if he returns to Fiji; a letter dated August 22, 2013, from the [REDACTED] discussing the oppressive situation in Fiji and his belief that the applicant would be at risk of harm by the current government of Fiji if he were to return; a letter dated August 21, 2013, from a retired U.S. Foreign Service Officer who worked with the applicant expressing his concern about the manner and circumstances of the applicant’s employment termination and stating that his return under these circumstances will place him at risk of harm by the current government of Fiji. The officer also expressed his belief that the adjustment of status of the applicant will serve U.S. national interest given his expertise in South Pacific international relations.

The applicant also submitted a statement of his father-in-law in Fiji claiming he was arrested and beaten by the current government because he was accused of engaging in anti-government activities and being an opponent of the government; various country condition reports; and other documents detailing human rights violations and the targeting of political opponents by the government of Fiji for detention and mistreatment. The applicant contends that this evidence establishes the compelling reasons why he cannot return to Fiji.

The applicant also provided information about his good moral character, his support of the movement to restore democracy to Fiji, and his background and experience, which he states he could utilize “for the betterment of his newly adopted country.” Based on the evidence, the applicant states that his adjustment of status will be in the U.S. national interest.

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(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, if they 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).

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 was admitted into the United States in A-1 non-immigrant status on August 16, 2010 and served as the [REDACTED] United States, Mexico and Canada until August 30, 2013, the date his employment was terminated by the Fiji government. He was in diplomatic status until September 1, 2013, the date the U.S. Department of State determined his A-1 status was terminated. The applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(i) of the Act and performed duties that were diplomatic or semi-diplomatic in nature.

Although the applicant has established his eligibility for consideration under Section 13, we find that he was not statutorily eligible to apply for adjustment of status at the time he filed his application on August 27, 2013. The record shows that the applicant was still in valid diplomatic status at the time he filed his application. The plain language of Section 13(a) requires that an alien not be maintaining status in order to *apply* for adjustment of status. Once the applicant has established that initial eligibility criteria, then the criteria found in Section 13(b) are considered in determining if the applicant is eligible to be adjusted to permanent resident status. Therefore, an applicant for adjustment of status under Section 13 must not be maintaining diplomatic status in order to apply for adjustment under Section 13, and his or her status must be terminated prior to the date on which the adjustment application is filed.

Pursuant to 8 C.F.R. § 214.2(a), an alien admitted under section 101(a)(15)(A)(i) of the Act maintains that status “for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status.” The authority to determine the date of termination of status under section 101(a)(15)(A)(i) of the Act rests exclusively with the State Department. An application for adjustment of status under Section 13 filed while the applicant is maintaining diplomatic or semi-diplomatic status is properly denied. However, denial of the application on this ground does not preclude the applicant from filing a new application once the requirement for applying – failure to maintain status – has been met.

As indicated above, the applicant was admitted in A-1 nonimmigrant status on August 16, 2010, and he served as the [REDACTED]. The record reflects that the applicant's employment was terminated by the [REDACTED] on [REDACTED].<sup>1</sup> The record further reflects that the applicant's diplomatic status was terminated by the U.S. Department of State on [REDACTED], upon receiving notification of his employment termination from the [REDACTED]. Therefore, based on the evidence of record, the applicant maintained legal status in the United States under section 101(a)(15)(A)(i) of the Act through September 1, 2013.

Accordingly, the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(i) of the Act and was maintaining that status at the time of his application for adjustment on August 27, 2013. He was therefore not eligible to apply for adjustment under Section 13 at the time of the filing.

As the applicant was not statutorily eligible to apply for adjustment of status under section 13 of the Act, the issues of whether the applicant has established compelling reasons that prevent his return to [REDACTED] and whether his adjustment of status is in the national interest of the United States will not be addressed at this time. As the applicant was not statutorily eligible to apply for adjustment of status under section 13 of the Act at the time of filing, the appeal will be dismissed.

Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. The applicant has failed to meet that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> See letter from the Ambassador, [REDACTED], dated July 10, 2013.