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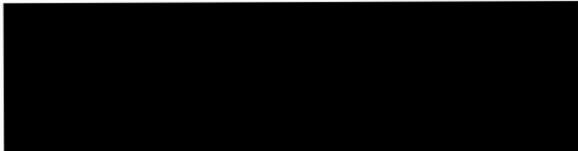
**APR 06 2009**

IN RE:



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:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Washington, D.C. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed. The application will be denied.

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

The field office director denied the application for adjustment of status after determining that the applicant had not established that he had entered the United States in A-1, A-2, G-1, or G-2 classification. The field office director found that the applicant had indicated on the Form I-485, Application to Register Permanent Resident or Adjust Status, that he had entered the United States as a visitor. The field office director determined that the applicant was not eligible for consideration under Section 13.

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.

Title 8 Code of Federal Regulations Part 245.3 states in pertinent part:

Any application for benefits under section 13 of the Act of September 11, 1957, as amended, must be filed on Form I - 485 with the director having jurisdiction over the applicant's place of residence. The benefits under section 13 are 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 Immigration and Nationality 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 which accredited the applicant and that adjustment of the applicant's status to that of an alien lawfully admitted for permanent residence would be in the national interest. 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. 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.

Counsel for the applicant timely submits a Form I-290B, Notice of Appeal. On appeal, counsel for the applicant asserts that the field office director failed to consider that the applicant in this matter filed a derivative application based on marriage to [REDACTED] (maiden name: [REDACTED]) who filed a Form I-485 application to adjust her status under Section 13. Counsel provides a copy of the applicant's spouse's Form I-485 and her G-1 visa and entry into the United States on January 18, 1997 in G-1 classification. The record also includes the applicant and his spouse's marriage certificate showing their marriage on October 23, 2007, in Brooklyn, New York. Counsel contends that as the applicant's spouse's Form I-485 has not been adjudicated, the adjudication of the applicant's Form I-485 is premature.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

Upon review of the record, the record does not contain evidence substantiating that the applicant is eligible to adjust status under Section 13. The applicant in this matter did not enter the United States as the spouse of an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i); rather, the applicant claims to have entered as a visitor.<sup>1</sup> The applicant is *prima facie* ineligible for consideration under the Section 13 statute. The benefit of Section 13 is limited to those individuals who entered in the specific classification of 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Act. As the applicant entered in visitor classification, he is ineligible to adjust status pursuant to Section 13. The ineligibility of the applicant to adjust under Section 13 does not preclude the possibility of adjustment pursuant to other sections of the Act.

As the record on appeal does not identify specifically any erroneous conclusions of law or statements of fact made by the field office director as a basis for the appeal, the appeal must be dismissed. The AAO is without further evidence or argument to evaluate regarding the applicant's failure to establish essential elements of eligibility for this benefit.

Inasmuch as the applicant has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

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<sup>1</sup> The AAO notes that the record does not contain evidence of the applicant's claimed lawful entry into the United States.

The application will be denied for the stated reason set out in the field office director's decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is summarily dismissed. The application is denied.