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



U.S. Citizenship
and Immigration
Services

A3

[REDACTED]

DATE:

Office: WASHINGTON DISTRICT OFFICE

File: [REDACTED]

IN RE:

FEB 13 2012

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 PETITIONER:

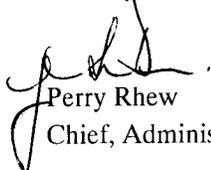
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The appeal will remain dismissed and the application will remain denied.

The applicant is a national of Venezuela 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 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 failed to demonstrate that she performed diplomatic or semi-diplomatic duties for the [REDACTED] to the United Nations and that she failed to present compelling reasons that prevent her return to [REDACTED]. In a March 24, 2009 decision, the AAO dismissed the applicant's appeal, affirming the director's decision and noting that the applicant had also failed to demonstrate that her adjustment of status was in the national interest of the United States.

Upon review of the applicant's duties, as set out by her testimony and others on her behalf, the AAO found that the applicant was performing clerical or administrative duties and not diplomatic duties. The AAO specifically noted an April 18, 2001 letter from the United States Mission to the United Nations acknowledging the applicant's employment as a receptionist. The AAO found that the record did not support a claim that the applicant had any formal advisory or decision-making roles at the Mission or that she represented [REDACTED] before any foreign government in an official capacity and moreover any such claim was inconsistent with the applicant's designation as a receptionist.

On motion, counsel asserts that the applicant attended and participated in some diplomatic meetings on behalf of other diplomats of [REDACTED]. Counsel submits an April 13, 2009 letter signed by [REDACTED]. In an earlier June 7, 2005 statement, [REDACTED] indicated that she had worked as a diplomat at the mission but did not include testimony regarding the applicant's duties at the Mission. In [REDACTED] April 13, 2009 letter submitted on motion she states that the applicant was "valuable support during [her] years at the Permanent Mission, as she assisted [her] during her tenure as negotiator for [REDACTED] on cultural, human rights and social issues at a number of UN meetings and summits." [REDACTED] adds that the applicant assisted her in organizing and convening various meetings, took minutes of official meetings, and prepared and distributed reports of different negotiations, including those where the applicant took part on her behalf. [REDACTED] statement identifies the applicant's duties as clerical. Although the applicant may have appeared at meetings on [REDACTED] behalf to take minutes and prepare and distribute reports, there is no evidence that the applicant was authorized to act on behalf of the [REDACTED] government at any of those meetings. Similarly, informing members of the '[REDACTED]' on matters of their interest and convoking informal meetings as a liaison between other diplomatic Missions and the [REDACTED] Mission, does not describe specific duties that are diplomatic or semi-diplomatic in nature. [REDACTED] general statement on motion does not demonstrate that the applicant performed diplomatic or semi-diplomatic duties on behalf of the [REDACTED] government.

Counsel also provides an April 13, 2009 statement signed by [REDACTED] who states that the applicant helped in convening, organizing and participating in several working sessions, informal consultations, informational and coordination meetings held at the UN Headquarters at the Permanent Mission of [REDACTED] and other diplomatic-related venues in New York. [REDACTED] describes the applicant's help as taking notes, briefing participants on protocol and procedural issues, and helping prepare reports for the [REDACTED] government and UN member States, as well as organizing meetings and keeping records and files and accompanying him in meetings. Again, [REDACTED] general statement regarding the applicant's duties does not demonstrate that the applicant's duties exceeded the organizing and recordkeeping duties of a clerical functionary. Although counsel emphasizes that [REDACTED] indicates that the applicant participated in diplomatic meetings, [REDACTED] follows this statement by a description of the applicant's clerical/administrative function at the meetings.

Counsel contends that a previously submitted letter also demonstrates that the applicant conducted diplomatic meetings. As the AAO determined, the previously submitted letter did not provide substantive evidence that the applicant performed diplomatic or semi-diplomatic duties on behalf of the [REDACTED] government. A review of the statements provided on motion only further confirms that the applicant performed clerical/administrative duties while employed at the [REDACTED] Mission. The record on motion does not establish that the applicant's duties differed from her designation as a receptionist who assisted in organizing meetings, taking notes, and translation as necessary. The record does not establish the applicant performed diplomatic or semi-diplomatic duties and accordingly she is not eligible for consideration for the benefit under Section 13.

Upon review of the applicant's testimony and the testimony offered by others on her behalf, the AAO previously determined that the applicant had not provided probative evidence that she is unable to return to [REDACTED] because of any action or inaction on the part of the [REDACTED] government or other political entity and that she had not demonstrated that she is at greater risk of harm because of her past government employment, political activities or other related reason. A review of the evidence previously submitted confirms that neither the applicant nor those offering testimony on her behalf provided probative detailed statements regarding specific incidents of threats or harassment against the applicant.

On motion, counsel asserts that the applicant will be subject to prison for eight to sixteen years as she has been accused of conspiracy against [REDACTED] defamation of the government and defamation of the President. As the AAO previously determined, the applicant did not provide probative evidence of the claimed accusations against her. In addition, we noted that the applicant in the first iteration of her testimony provided no information regarding the personal animosity between herself and the [REDACTED] and that she did not indicate she had any political disagreement with the [REDACTED] government; rather she stated that her fear of return to [REDACTED] related to her former business associates. The applicant's subsequent testimony added that she was subjected to threats and harassment because of her expression of disagreement with the [REDACTED] government's policies and that the Ambassador serving at the Mission had sent information to the [REDACTED] government indicating that she opposed the government. Contrary to counsel's claim on motion, however, the record does not include probative evidence that the applicant was accused of conspiracy against [REDACTED] or defamed the government or the President.

As was previously stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

On motion, counsel asserts that the verbal threats against the applicant and her family have turned into actions. Counsel provides an April 11, 2009 letter from the applicant's sister indicating that she was a victim of an attempted kidnapping on December 23, 2008 and that she believed the potential kidnappers were either police or military. The applicant's sister notes that she contacted a friend who knew an investigating agent who strongly suggested that she not file a report as he believed that the potential kidnappers were police officials, but that this individual, due to fear and reprisals, refused to provide a statement to that effect. Counsel also contends that political and human rights organizations continuously denounce the actions of the [REDACTED] government and that the applicant will be subjected to prison if she returns.

Upon review of the additional information provided on motion, the record does not include probative evidence establishing that the alleged attempted kidnapping of the applicant's sister was because of the applicant's political actions. The information provided is speculative and not substantiated. The AAO again acknowledges the turmoil that exists in [REDACTED] today and as outlined in the articles submitted on motion. However, the applicant has not provided evidence that she is at greater risk of harm from the [REDACTED] government due to any political changes in [REDACTED] 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 or would be at risk of harm because of her political activities. It is again noted that the State Department has objected to the applicant being granted adjustment of status and indicated that it does not believe that compelling reasons prevent the applicant's return to [REDACTED]. See Interagency Record of Request (Form I-566). The applicant in this matter has failed to meet her burden of proof in demonstrating that there are compelling reasons that prevent her return to [REDACTED] as required under Section 13. Accordingly, the AAO's previous decision remains undisturbed.

Although unnecessary to address because the applicant has not established that she was a diplomat performing diplomatic or semi-diplomatic duties and because she has not established that compelling reasons preclude her return to [REDACTED], the applicant also failed to establish that her adjustment of status is in the national interest. Counsel asserts that demonstrating that the applicant's adjustment of status is in the national interest should be interpreted broadly and cites Board of Immigration Appeal precedent decisions granting adjustment of status to individuals whose benefit to the United States is unclear. The cases cited involve facts that are not analogous to the matter at hand. Moreover, although the applicant works for a worthy organization, such work does not demonstrate that her adjustment is in the national interest as the term is understood in the context of Section 13 adjudications.

The eligibility for relief pursuant to Section 13 is limited and ineligibility for Section 13 relief does not preclude the applicant from pursuing other benefits provided under the immigration laws of the United States.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

ORDER: The previous decision of the AAO, dated March 24, 2009, is affirmed. The application remains denied.