



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: JUL 09 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:

[Redacted]

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) 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".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The director, National Benefits Center, denied the application to adjust status under Section 13 of the Immigration and Nationality Act (“Section 13”). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted. The previous decision of the AAO is affirmed and the application remains denied.

The applicant is a native and citizen of Nigeria, 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 amended, 95 Stat. 1611, 8 U.S.C. § 1255b, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(G)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(ii).

The director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent her return to Nigeria. The director also noted that on March 14, 2014, the U.S. Department of State issued its opinion recommending that the adjustment of status application of the applicant be denied because the applicant presented no compelling reasons why she cannot return to Nigeria. *See Decision of the Director*, dated June 6, 2014.

On appeal, the applicant asserted that the director erroneously concluded that she had failed to establish “compelling reasons related to political changes in Nigeria that rendered diplomats and foreign representatives ‘stateless or homeless’ or at risk of harm.” The applicant claimed that the evidence provided established compelling reasons why she is unable to return to Nigeria. The applicant further claimed that her parents’ political activities in Nigeria would expose her to kidnapping by her parents’ political opponents. The applicant submitted a brief from counsel and country condition information on Nigeria in support of her appeal.

On November 17, 2014, we dismissed the appeal and concurred with the director’s determination that the applicant had failed to demonstrate that compelling reasons within the definition of Section 13 prevented her return to Nigeria. In addition, we found that the applicant was not eligible for consideration under Section 13 because she filed her application while she was still in G-2 nonimmigrant status.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The motion to reopen qualifies for consideration under 8 C.F.R. § 103.5(a)(2) because the applicant alleges new facts and provides supporting documentation not previously in the record in support of her assertion that compelling reasons prevent her return to Nigeria.

A motion to reconsider must: (1) 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 USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The motion qualifies for consideration under 8 C.F.R. § 103.5(a)(3) because the applicant alleges that the AAO relied on

an error in fact when denying the application and erred in finding that the applicant did not establish compelling reasons why she is unable to return and live in Nigeria.

On motion, the applicant asserts that she is eligible for consideration under Section 13 because she worked for the Permanent Mission of Nigeria to the United Nations from [REDACTED] 2011 until her employment was terminated in [REDACTED] 2011 and that she filed her adjustment of status application on March 5, 2012. The applicant contends that she was no longer in status on March 5, 2012 when she filed her application.

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).

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 and has applied, then the criteria found in Section 13(b) are considered in determining if the applicant is eligible to be adjusted to permanent resident status. 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 therefore be terminated prior to the date on which the adjustment application is filed. The applicant's assertion that her status was terminated in December 2011, two months before she filed her application, is not supported by the record.

Pursuant to 8 C.F.R. § 214.2(a), an alien admitted under section 101(a)(15)(G)(ii) 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." Thus, the authority to determine the date

of termination of status under section 101(a)(15)(G)(ii) of the Act rests exclusively with the State Department.

The applicant was admitted in G-2 status on [REDACTED] 2011 and served thereafter as an [REDACTED] at the Permanent Mission of Nigeria to the United Nations, [REDACTED] until that status was terminated on [REDACTED] 2012, as determined and reported by the U.S. Department of State. Therefore, notwithstanding the date on which the applicant's employment may have been formally terminated by the government of Nigeria, she maintained legal status in the United States under section 101(a)(15)(G)(ii) of the Act through [REDACTED] 2012.

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.

On motion, the applicant submits an affidavit from her mother reiterating in essence what she herself had claimed in previous submissions – her fear of being kidnapped for ransom by her parents' political opponents. The applicant also submitted a brief from counsel and a copy of a [REDACTED] article on Nigeria, dated [REDACTED] 2011.

The applicant asserts on motion that she has submitted extensive evidence which demonstrates that she has been the target of threats of kidnapping and violence and that this threat remains, making return to Nigeria impossible for her. She contends that her government employment as an [REDACTED] to the Permanent Mission of Nigeria to the United Nations, coupled with her father's political position in Nigeria, puts her at greater risk of harm. The applicant's mother claims that the family continues to receive phone threats and that the applicant has been a direct target of many threats because as her daughter, the applicant's kidnapping would bring about the most shame to the family and would be used as leverage in obtaining the most ransom possible. Documentation previously submitted indicates that the applicant's mother was kidnapped in March 2010 and held for several days until a ransom was paid. It is not clear from the record who carried out the kidnapping and why the applicant's mother was targeted. On motion, the applicant refers to a [REDACTED] article about the bombing of a UN building in Abuja, Nigeria by Boko Haram to support her assertions. However, the evidence on record does not establish that the applicant would be targeted for harm by Boko Haram or any other group upon her return to Nigeria because of her prior employment with the government of Nigeria in the United States.

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 alien." (Emphasis added). The term "compelling" must be read in conjunction with the term "unable," and reasons that are compelling are therefore those that render the applicant unable to return, rather than those that merely make return undesirable or not preferred from the applicant's perspective. While we are sympathetic that the applicant may fear kidnapping by Boko Haram or

other groups in Nigeria, particularly in light of her mother's kidnapping five years ago, this fear is not a compelling reason related to political changes that render diplomats and foreign representatives "stateless or homeless" or at risk of harm following political upheavals. The applicant has failed to demonstrate that she would be specifically targeted for the work she did at the Permanent Mission of Nigerian to the United Nations. Although she may fear for her safety due to conditions in Nigeria, general insecurity is insufficient for the applicant to establish compelling reasons that prevent her return to Nigeria, and there is no indication of a specific threat to the applicant as a returning diplomat based on her prior employment with the government of Nigeria. The documentation provided by the applicant on motion does not establish compelling reasons that prevent her return to Nigeria. The evidence is insufficient to overcome the basis of our decision in this matter.

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, our decision to dismiss the appeal will be affirmed.

ORDER: The motion is granted and the previous decision dismissing the appeal is affirmed. The application remains denied.