



U.S. Citizenship  
and Immigration  
Services

(b)(6)



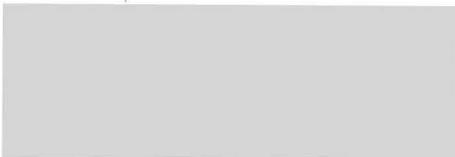
DATE: JUL 15 2015

FILE: [REDACTED]  
APPLICATION RECEIPT: [REDACTED]

RE: Applicant: [REDACTED]

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:



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,

  
Ron M. Rosenberg

Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the National Benefits Center Director. 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 Guinea, 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, at the time he applied for adjustment under Section 13, the applicant was still maintaining diplomatic status. . The director noted that the U.S. Department of State confirmed that the applicant maintained his A-1 non-immigrant status at the time he filed his Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), on April 28, 2010. *See Decision of the Director*, dated September 27, 2013.<sup>1</sup>

On appeal, the applicant, through counsel, asserts that the director erroneously concluded that he was ineligible to file for adjustment of status. The applicant claims he was terminated from his position with the Embassy of Guinea on September 9, 2009, and he was not aware that the embassy failed to notify the U.S. Department of State of his termination before he filed Form I-485. The applicant also states that he expected his embassy to notify the U.S. Department of State of his termination, as required, and he did not renew his diplomatic identification card or his personal tax exemption card, both of which expired on September 30, 2010. The applicant submits a brief and additional evidence. *See Form I-290B, Notice of Appeal or Motion*, filed January 14, 2014.

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 [now Secretary of the Department of Homeland Security (DHS Secretary)] 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 [DHS Secretary] 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 [DHS Secretary], in his discretion, may record the alien's

---

<sup>1</sup> The director dismissed a subsequent motion to reopen, filed before the instant appeal, on December 16, 2013.

lawful admission for permanent residence as of the date [on which] the order of the [DHS Secretary] 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, 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.

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).

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. 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. 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 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. Even where the meaning of a statutory provision appears to be clear from the plain language of the statute, it is appropriate to look to the legislative history to determine "whether there is 'clearly expressed legislative intention' contrary to that language, which would require [questioning] the strong presumption that Congress expresses its intent through the language it chooses." *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 433, fn. 12 (1987).

The legislative history supports the plain meaning of the language in Section 13 that those eligible for adjustment of status under Section 13 are those diplomats that have been, in essence, rendered stateless or homeless by political upheaval, hostilities, etc., and are thus unable to return to and live in their respective countries.

The threshold issue in this proceeding is whether the record establishes the applicant's eligibility for consideration under Section 13 of the Act.<sup>2</sup>

The record reflects that the applicant entered the United States on August 3, 2009, in A-1 nonimmigrant status, to work at the Embassy of Guinea in [REDACTED] as a [REDACTED]. Although the applicant, in his sworn statement before an immigration officer, asserts that his diplomatic status terminated in September 2009, the authority to determine the date of termination of diplomatic status rests exclusively with the U.S. Department of State. According to the U.S. Department of State, the applicant's status was terminated on September 6, 2013. The applicant filed his adjustment of status application on April 28, 2010. The applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(i) of the Act and still held that status at the time he filed Form I-485 on April 28, 2010. Therefore, the director's decision to deny the application is affirmed.

The record does not establish the applicant's eligibility for consideration under Section 13 of the 1957 Act. 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.

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 not met that burden.

**ORDER:** The appeal is dismissed.

---

<sup>2</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).