

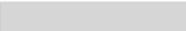
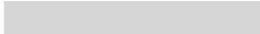


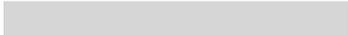
U.S. Citizenship  
and Immigration  
Services

(b)(6)



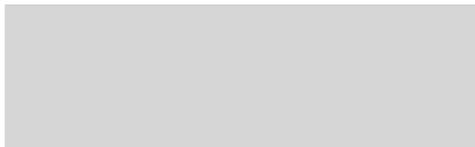
DATE: **JUL 20 2015**

FILE :   
APPLICATION RECEIPT #: 

IN RE: Applicant: 

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,

  
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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 Saudi Arabia 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)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

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 Saudi Arabia. The director also noted that on April 8, 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 Saudi Arabia. *Decision of the Director*, dated June 25, 2014.

On appeal, the applicant asserts that the director erred in his decision to deny the application. The applicant states that the director’s interpretation of “compelling reasons” was too narrow and ultra vires to the statute and regulations. He claims that there is nothing in the statute that requires “compelling reasons” to be political in nature and that the statute only requires compelling reasons to demonstrate an inability to return to his country. The applicant asserts that if Congress wanted to specify that “compelling reasons” only relate to political reasons, it would have done so in the text of the statute.

The applicant further states that the phrase “compelling reasons” is unambiguous, that it is used in a clear manner throughout the statute and regulations to mean reasons that are “forceful” or “convincing” and that it is an error for the director to look beyond the plain meaning of the text in interpreting the statute to the legislative history behind Section 13.

The applicant states that the medical condition of his son, the ongoing specialized medical treatment his son is receiving in the United States, and the unavailability of such medical treatment in Saudi Arabia are sufficient compelling reasons precluding his return to Saudi Arabia.

The director also denied the application of the applicant’s spouse who filed an application for adjustment of status under Section 13 of the Act as a derivative dependent of the applicant. The applicant’s spouse has filed a separate Form I-290B, Notice of Appeal or Motion, requesting a review of the director’s decision. A separate decision will be issued in her case.

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).

The AAO now turns 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. The applicant was admitted in A-2 status on or about May 22, 2005 and served as an [REDACTED]

with the [REDACTED] at the Royal Embassy of Saudi Arabia in [REDACTED], until the end of his assignment on December 1, 2012. The record shows that the applicant performed duties that were semi-diplomatic in nature. His status at the Royal Embassy of Saudi Arabia was terminated by the U.S. Department of State on January 15, 2013 and he filed his adjustment of status application on February 26, 2013. The applicant was therefore admitted to the United States in diplomatic status under 101(a)(15)(A)(ii) of the Act but no longer held that status at the time of his application for adjustment on February 26, 2013, as required by Section 13 of the Act.

As such, the only issue before us is whether the record also establishes that the applicant, at the time of the director's June 25, 2014 decision, had compelling reasons that precluded his return to Saudi Arabia and that his adjustment would have served U.S. national interests – the requirements of section 13(b) of the 1957 Act.

The applicant's stated reason for not wanting to return to Saudi Arabia is the medical condition of his son. In his sworn statement, dated May 20, 2013, the applicant stated that his son was diagnosed with Fucosidosis, a rare disease; that his condition is very critical; and that he is receiving medical treatment from a group of doctors here in the United States who have recommended that his son remain in the United States to continue receiving needed medical treatment. The applicant also stated that there are no treatments for such diseases in Saudi Arabia for his son and no schools there will accept him because of his condition.

The evidence on the record supports the director's determination that the applicant had failed to establish compelling reasons why he is unable to return to Saudi Arabia. The applicant's stated reason for not wanting to return to Saudi Arabia, the medical condition of his son, is not a compelling reason as contemplated by Section 13. As discussed above, the legislative history of Section 13 indicates 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.

The applicant has asserted that the phrase "compelling reasons" is unambiguous, that it is used in a clear manner throughout the statute and regulations to mean reasons that are "forceful" or convincing," and that it was an error to look beyond the plain meaning of the text in interpreting the statute to require the reasons be political in nature.

The finding that Congress intended that compelling reasons relate to political changes that render diplomats and foreign representatives at risk of harm following political upheavals is supported by the legislative history of Section 13 and is consistent with the purpose of the statute. Although legislative statements have less force than the plain language of the statute, such statements are helpful to corroborate and underscore a reasonable construction of the statute. *Matter of Punu*, 22 I. & N. Dec. 224, 227 (BIA 1998) (citing *Weinberger v. Rossi*, 456 U.S. 25, 32 (1982)). The BIA has looked at legislative history to determine whether an interpretation of statutory language is supported by the legislative history and therefore consistent with the purpose of the statute. See *Matter of Sosa Ventura*, 25 I&N Dec. 391, 393-94 (BIA 2010); *Matter of Avila-Perez*, 24 I&N Dec. 78, 83 (BIA 2007) (stating

that when statutory language is unclear, the BIA considers legislative history to help determine congressional intent); *see also I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 433, fn. 12 (1987) (finding that 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. . .”); *Rosenberg v. Fleuti*, 374 U.S. 449, 460-62 (1963) (looking beyond the plain words of the statute in construing the intent exception to section 101(a)(13) of the Act and relying on legislative history to conclude that “the general purpose of Congress . . . [was] to ameliorate the severe effects of the strict ‘entry’ doctrine.”).

The legislative history and the statutory language as a whole support an interpretation of Section 13 that those eligible for adjustment of status are those diplomats that are unable to return to and live in their respective countries because of compelling reasons that relate to political changes that render them at risk of harm following political upheavals. We therefore find no error in the director’s determination.

We acknowledge the evidence that the applicant and his son may experience hardship based on his son’s medical condition if they return to Saudi Arabia. However, remaining in the United States so that his child would continue to receive specialized medical treatment that may not be available in Saudi Arabia is not compelling reasons under Section 13. As noted above, compelling reasons have to relate to political changes in the country that render the applicant “stateless or homeless” or at risk of harm following such upheaval. That is not the situation in this case. The applicant has consistently stated that the only reason he does not want to return to Saudi Arabia is for the health and general wellbeing of his son. He stated affirmatively that he would not be persecuted for any reason if he returned to Saudi Arabia. It is also noted that the U.S. Department of State issued an opinion recommending that the applicant’s request for adjustment of status under Section 13 be denied because he has not presented compelling circumstances to meet the standard of Section 13. *See* Interagency Record of Request (Form I-566). We therefore conclude that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons within the meaning of Section 13 that prevent his return to Saudi Arabia. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Saudi Arabia, it is unnecessary to determine whether his adjustment of status would be in the U.S. national interest.

For the reasons discussed above, we find that the applicant is not eligible for adjustment of status under Section 13 of the Act. 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.