U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25609632

Date: APR. 20, 2023

Appeal of National Benefits Center Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant is a citizen of El Salvador who seeks to adjust status to that of a lawful permanent resident under section 13 of the 1957 Immigration Act (Section 13). 8 U.S.C. § 1255b. Section 13 allows a noncitizen who was previously an A-1, A-2, G-1, or G-2 nonimmigrant to adjust status if certain criteria are met.[1]

The Director of the National Benefits Center denied the Form I-485, concluding that the Applicant did not establish as required that there were compelling reasons preventing her return to El Salvador. The matter is now before us on appeal.

On appeal, the Applicant submits a brief. She asserts that her previous sworn testimony establishes she will be at risk of harm upon return to El Salvador because of her past government employment, and the Director's decision was therefore in error.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 13 is an adjustment of status category for foreign nationals who can demonstrate, in part: (1) failure to maintain A-1, A-2, G-1, or G-2 nonimmigrant status as of the application's filing date; (2) performance of diplomatic or semi-diplomatic duties by the principal on behalf of the accrediting country; and (3) inability, because of compelling reasons, to return to the country that accredited the foreign national. 8 U.S.C. § 1255b(b); 8 C.F.R. § 245.3.[2]

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[1] Pub. L. No. 85-316, 71 Stat. 642, *amended by* Pub. L. No. 97-116, 95 Stat. 161 (1981). The A nonimmigrant classification is for diplomats and foreign government officials (principal) as well as their immediate family members. The G nonimmigrant classification is for employees of certain international organizations (principal) and their immediate family members. *See* https://travel.state.gov.

[2] If the first three eligibility requirements are met, applicants must also establish that compelling reasons demonstrate that

II. ANALYSIS

Although the Director denied the application solely because the evidence did not demonstrate that compelling reasons render the Applicant unable to return to El Salvador, we have identified an additional basis of ineligibility for adjustment of status under Section 13, as the evidence also does not show that the Applicant performed diplomatic or semi-diplomatic duties in the course of her employment in the United States. We will therefore address both issues in this decision, as each is a separate basis of ineligibility for the requested benefit.

A. Diplomatic or Semi-Diplomatic Duties

To be eligible for adjustment of status under Section 13, a principal must have performed diplomatic or semi-diplomatic duties.

The terms *diplomatic* and *semi-diplomatic* are not defined in Section 13 or pertinent regulations and the standard definition of diplomatic is varied and broad. The regulation at 8 C.F.R. § 245.3 specifically indicates that duties "of a custodial, clerical, or menial nature" are not diplomatic or semi-diplomatic. Black's Law Dictionary does not include the term *diplomatic*, but refers to the word *diplomacy*, which it defines as:

> 1. The art and practice of conducting negotiations between national governments.
> . . .
> 2. Loosely, foreign policy.
> 3. The collective functions performed by a diplomat. – diplomatic, *adj.*

(11th ed. 2019). Consular functions are generally not diplomatic functions, but the performance of consular functions does not preclude a finding that one has also performed diplomatic duties as these two functions are not mutually exclusive.[3] Thus, we must evaluate the position held and the duties performed to determine whether an applicant has demonstrated, as a threshold matter, that they performed the types of duties required of a position that is either diplomatic or semi-diplomatic.

The record reflects that the Applicant was employed as a [redacted] at a Salvadoran consulate in the United States. During her adjustment interview before a U.S. Citizenship and Immigration Services (USCIS) immigration officer the Applicant testified that while employed at the consulate she was in charge of financial administrative affairs, and her duties consisted of managing the budget, including payment of salaries, and preparation of monthly reports that were forwarded to El Salvador; scheduling events; and attending meetings to promote trade, tourism, and cultural exchange between El Salvador and the United States. The Applicant further testified that she was in charge of the consulate's legal department, and was responsible for signing documents that had legal effect in El Salvador, such as public deeds, family registry, marriage and death certificates, and notifications of court rulings. The Applicant stated that as part of her duties she visited detention centers for Salvadorean prisoners who

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their adjustment would be in the national interest and would not be contrary to the national welfare, safety, or security of the United States and that they are of good moral character and admissible to the United States. Discussion of these remaining criteria is generally unnecessary in cases where the first three eligibility criteria have not been met.

[3] *See generally* Vienna Convention on Diplomatic Relations, Art. 3 et seq., 23 U.S.T. 3227, 500 U.N.T.S. 95, given effect by the Diplomatic Relations Act of 1978, 28 U.S.C. § 252.

requested to serve their sentences in El Salvador, and that she also interviewed detained Salvadoreans to confirm their nationality for the purposes of removal from the United States on criminal and other charges, such as repeated immigration violations. Aside from the Applicant's verbal testimony, the record includes her affidavit submitted with the adjustment of status request. In this affidavit, the Applicant stated, consistently with her interview testimony that her duties as the [redacted] consisted of administrative functions, attending meetings to discuss cultural, and trade exchanges, and providing consular protection to Salvadorean nationals detained in the United States. The Applicant's testimony does not indicate that her job responsibilities were related to negotiations between national governments, foreign policy issues, or other diplomatic functions. Rather, it appears that her duties primarily involved clerical and administrative support of consular functions, such as managing the budget, issuing or confirming validity of certain documents under Salvadorean law, and assisting Salvadoran nationals who were either in removal proceedings or imprisoned in the United States. Routine consular duties that an individual performs for the country of accreditation are not considered diplomatic or semi-diplomatic duties in the context of Section 13, because they concern the country of accreditation only and not diplomacy between governments. The Applicant therefore has not established that while she was employed at the consulate she performed diplomatic or semi-diplomatic duties, as required for adjustment of status under Section 13.

B. Compelling Reasons

A Section 13 applicant must show "[c]ompelling 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 (emphasis added) . . . ." 8 U.S.C. § 1255b(b). However, neither the statute nor the regulation at 8 C.F.R. § 245.3 defines the term "compelling reasons" or describes the factors for us to consider. Therefore, to meaningfully interpret Congress' intent in requiring an applicant to show the existence of compelling reasons, we must turn to the statute's legislative history.

When originally introduced in Congress in 1957, the purpose of Section 13 was to provide for lawful permanent residency to "[t]hose high ranking Government officials and their immediate families who have come here as diplomatic representatives, or representatives of their countries to the United Nations [and who], [b]ecause of Communist and other uprisings, aggression, or invasion . . . are left homeless and stateless." 85th Cong., 103 Cong. Rec. 14660. The enacted legislation required a foreign national to have failed to maintain his or her A or G nonimmigrant status, demonstrate that he or she is a person of good moral character and admissible to the United States, and that adjusting the foreign national's status would not be contrary to the national welfare, safety, or security of the United States. The statute did not, however, contain explicit language requiring a foreign national to show compelling reasons demonstrating both an inability to return to the country of accreditation or that the adjustment would be in the national interest. Rather, the compelling reasons language was added to the statute in 1981 because on several occasions during the prior years, Congress opposed the recommended approval of numerous Section 13 applications "for failure to satisfy the criteria clearly established by the legislative history of the 1957 law." H.R. Rep. 97-264 (1981). As noted in one report:

> The Committee recalls that the purpose of this section, as reflected in the legislative history, is to permit the adjustment of immigration status to a limited number (50) of foreign diplomats who for compelling reasons may find it impossible to return to the countries which accredited them to the United States (Report No. 1199, 1st Session – 85th Congress). . . .

(Emphasis added). H.R. Rep. 94-1659 (1976).

The legislative history of Section 13 reflects that Congress created this immigration classification for a select few—high-ranking government officials whose return to their countries of accreditation was impossible due to dramatic political changes that had occurred during the officials' diplomatic postings. Accordingly, we must interpret the term "compelling reasons" narrowly, consistently with the expressed intent of Congress, when determining whether an applicant is unable to return to the country of accreditation. Reasons that may be considered compelling are those resulting from a fundamental political change that has, in essence, rendered an applicant homeless or stateless, making it impossible for the applicant to return to the country of accreditation because of the A or G nonimmigrant status that the applicant once held. An applicant bears the burden not only of demonstrating the fundamental political change that has occurred, but also showing that, as a result, it has become impossible to return to that country because of his or her prior A or G nonimmigrant status and that the applicant has thus been rendered homeless or stateless.

We realize that a narrow interpretation of the term "compelling reasons" will exclude those applicants who desire to remain in the United States to seek and pursue medical, educational, and employment opportunities for themselves or their family members that may not be available in the countries of accreditation. However, we believe that a narrow interpretation is appropriate in light of the classification's legislative history, as Section 13 was not created as an adjustment of status of category for all former A or G nonimmigrants who may face difficulties or disruptions upon returning to their countries of accreditation.

The Applicant testified she was afraid to return to El Salvador because in the course of her employment at the consulate she interviewed many Salvadorean nationals who were dangerous criminals. She explained that as a government official she had been exposed to threats and insults, and feared that some of her interviewees who had already been removed to El Salvador might recognize her and retaliate against her if she returned there. The Applicant stated that in 2017 she was called to testify as a witness in a matter involving several individuals who entered the consulate outside of business hours; one of the accused, a Salvadorean national returned to the consulate and requested her to drop the charges implying that if she did not, she and her family might be harmed once they were back in El Salvador. In addition, the Applicant related that she was appointed as vice consul when the Farabundo Martí National Liberation Front (FMLN) was in power in El Salvador, and the current government officials, militants, and sympathizers of the two majority parties, Nuevas Ideas and GANA, use social media to incite hatred and violence towards former officials associated with the FMLN party. She indicated that under those circumstances her safety in El Salvador cannot be guaranteed, and the interviews she conducted while employed at the consulate would expose her even further to possible harm from dangerous criminals. In support, the Applicant submitted a snapshot of what appears to be a derogatory comment about FMLN on the Salvadorean president's Twitter

account, and two online entries or short articles referencing FMLN.[4] As stated, the Director determined that the reasons for the Applicant's inability for returning to El Salvador were not "compelling" in the context of adjustment of status under Section 13, as the Applicant did not demonstrate that they related to political changes in El Salvador, or that she or her family members would be targeted or at risk of harm by the Salvadoran government because of her past employment at the consulate or political activities.

On appeal, the Applicant asserts that not all cases under Section 13 arise after political upheavals in the country that accredited the former government official to the United States. She avers, without providing any supporting documentation, that Section 13 is intended to shield the returning diplomats from the specific actions, or lack thereof of their country's governments; thus, if a former diplomat will be returning to a country that cannot provide them with the necessary protection from threats to which they were exposed while performing their official duties in the United States, this alone should constitute "compelling reasons" for purposes of Section 13. The Applicant reiterates that if she were to return to El Salvador with her family she would be exposed to possible harm from the criminals she interviewed, and her life would be in danger given the current political situation in the country.

We acknowledge the Applicant's statements. However, those statements alone are not sufficient to show that our interpretation of the term "compelling reasons," as tied to fundamental political changes in the country of accreditation that occur while an individual is in valid A or G nonimmigrant status and leave the individual homeless or stateless, is incorrect. The Applicant does not identify a fundamental political change occurring in El Salvador during her diplomatic posting that prevents her from returning there. Moreover, there is nothing in the record to indicate that the current government of El Salvador is targeting former diplomats accredited by its predecessor, or that the Applicant would not be afforded the government protections available to other citizens of El Salvador because of her past employment at the consulate. Consequently, the Applicant has not demonstrated the existence of compelling reasons for her claimed inability to return to El Salvador.

III. CONCLUSION

There are two independent bases for the Applicant's ineligibility to adjust status under Section 13, as she has not shown that she performed diplomatic or semi-diplomatic duties, and she has not demonstrated the existence of compelling reasons that render her unable to return to El Salvador. Because the Applicant is ineligible for adjustment of status under Section 13 on those grounds, we need not address at this time whether she has established that her adjustment of status is in the national interest or whether approval of her Form I-485 would be warranted as a matter of discretion.[5]

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[4] None of these materials are not accompanied by a certified English translation. *See* 8 C.F.R. § 103.2(a)(3) (requiring that any document containing foreign language submitted to USCIS must be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that they are competent to translate from the foreign language into English).

[5] Instead, we reserve those issues. Instead we reserve the issue. *See I.N.S. v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

ORDER: The appeal is dismissed.