



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 26053860

Date: MAY 3, 2023

Appeal of National Benefits Center Decision

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

The Applicant is a citizen of Nigeria 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 adjustment request, concluding that the Applicant did not establish, as required, that there were compelling reasons preventing her return to Nigeria. The matter is now before us on appeal.

On appeal the Applicant submits a supplemental statement and reasserts eligibility.

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 noncitizens 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

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 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.

II. ANALYSIS

The Applicant, who was last admitted to the United States as an A-2 nonimmigrant in August 2017, is seeking to adjust status under Section 13 as the immediate relative of a diplomat or foreign government official. The record indicates that the Applicant's spouse (principal) was employed at the Embassy of Nigeria in the United States as an administrative officer.³

The Director determined that the Applicant did not establish she was eligible for adjustment of status under Section 13, because she did not provide evidence of compelling reasons related to political changes in Nigeria that made her stateless or homeless or placed her at risk of harm from the Nigerian government.

Although the Director denied the application solely because the Applicant did not demonstrate that compelling reasons render her unable to return to Nigeria, we have identified an additional basis of ineligibility for adjustment of status under Section 13, as the evidence also does not show that the principal performed diplomatic or semi-diplomatic duties in the course of his 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). 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.

³ We note that a Section 13 applicant must not only have been admitted to the United States as an A or G nonimmigrant, but also must have failed to maintain that status. 8 U.S.C. § 1255b(a). The Applicant filed the instant Form I-485 in November 2017, and although the record does not establish if and when the U.S. Department of State terminated her A-2 nonimmigrant status, the Applicant testified that her spouse's employment at the embassy continued until sometime in 2018. If the Applicant's A-2 status had not been terminated prior to the filing of her Form I-485, she would be ineligible for the Section 13 adjustment on this additional basis.

During her adjustment interviews⁴ before a U.S. Citizenship and Immigration Services (USCIS) immigration officer the Applicant testified that her spouse was employed as an administrative assistant, and that his duties included keeping records about Nigerians living in the United States, and sometimes representing the embassy in meetings with the U.S. Immigration and Customs Enforcement (ICE) concerning Nigerian nationals who were in the United States illegally. She further testified that her spouse also handled correspondence that was sent to the embassy from Nigeria. Aside from the Applicant's general testimony, which indicates that her spouse primarily performed clerical and administrative duties, the record does not include any documents describing his job title and responsibilities at the embassy. Routine administrative functions an individual performs for the country of accreditation are not considered diplomatic or semi-diplomatic duties, as contemplated under Section 13, because they concern the country of accreditation only and not diplomacy between governments. As there is nothing in the record to indicate that the Applicant's spouse's duties were related to negotiations between national governments, foreign policy issues, or other diplomatic functions, we conclude that the Applicant has not established that the principal performed diplomatic or semi-diplomatic duties, as required for adjustment of status under Section 13.

B. Compelling Reasons

Furthermore, the evidence is insufficient to show that there are compelling reasons, for Section 13 adjustment purposes, preventing the Applicant's return to Nigeria.

As stated, 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 noncitizen to have failed to maintain their A or G nonimmigrant status, demonstrate that they are a person of good moral character and admissible to the United States, and that adjusting the noncitizen'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 noncitizen 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

⁴ The record reflects that the Applicant was interviewed twice in connection with her adjustment of status request—in 2018 and 2020.

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 felt it was unsafe for her to return to Nigeria, because former diplomats and their family members returning from the United States are perceived as having money, and may be kidnapped for ransom, robbed, or even murdered. She further testified that although she did not think the government would prosecute her, she has been following the news of a lot of killings and increased Boko Haram activity in Nigeria, and believed the government would not be able to protect her. Lastly, she stated that she was offered a job in the United States and would like to remain in the country to pursue her own career and to provide better opportunities for her children.

The Director determined that although the Applicant may face difficulties upon returning to Nigeria, general inconveniences and hardships associated with relocation or dangers experienced by a population as a whole were not considered compelling reasons for Section 13 purposes.

On appeal, the Applicant reiterates that although her spouse returned to Nigeria in 2018, after his employment at the Nigerian embassy in the United States had ended, and currently resides there, she

is afraid to return to Nigeria because there have been kidnappings for ransom in Nigeria, and she fears she might be targeted as someone coming back from the United States with a lot of money.

We acknowledge the Applicant's statements concerning the adverse situation in Nigeria and her desire to remain in the United States; however a generalized fear of violence or overall conditions in the country of accreditation are insufficient to establish the existence of compelling reasons in the context of Section 13 adjustment. Rather, as discussed, reasons considered compelling are those resulting from a fundamental political change that prevents a former diplomat and family members from returning to the home country because of the diplomat's prior government service. Here, the Applicant does not claim that such a fundamental political change took place in Nigeria since she and her spouse were admitted to the United States as A-2 nonimmigrants and that she is unable to return to Nigeria as a result of this change. Consequently, she has not demonstrated compelling reasons, as that term is understood in the context of Section 13, that render her unable to return to Nigeria.

III. CONCLUSION

There are two independent bases for the Applicant's ineligibility to adjust status under Section 13, as she has not shown that the principal, her spouse, performed diplomatic or semi-diplomatic duties, and she has not demonstrated the existence of compelling reasons that prevent her from returning to Nigeria. 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

ORDER: The appeal is dismissed.

⁵ Instead, we reserve those issues. 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.").