U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28210919

Date: OCT. 31, 2023

Appeal of National Benefits Center Decision

Form I-485, Application to Register Permanent Residence or Adjust Status (Section 13 Diplomat)

The Applicant is a citizen of Bangladesh 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 application, concluding that the Applicant did not establish that there were compelling reasons preventing his return to Bangladesh, as required under Section 13. On appeal, the Applicant submits additional documentation and asserts that he has established compelling reasons that he is unable to return to Bangladesh.

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.

Section 13 provides that a noncitizen, along with immediate family members, who was admitted to the United States as an A-1, A-2, G-1, or G-2 nonimmigrant, and who has failed to maintain that status, may apply for adjustment of status. 18 U.S.C. § 1255b(a), 8 C.F.R. § 245.3. An applicant must show compelling reasons why the applicant (or a member of the applicant's immediate family) is unable to return to the country represented by the government which accredited the applicant (or a member of the applicant's immediate family), and that adjustment of status would be in the national interest. 18 U.S.C. § 1255b(b). An applicant must further demonstrate that adjustment of status would not be contrary to the national welfare, safety, or security of the United States, and that the applicant is a person of good moral character and admissible to the United States. *Id*.

The regulations provide that adjustment of status under Section 13 is limited to those noncitizens who performed diplomatic or semi-diplomatic duties and to their immediate families, and that a noncitizen

[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.

whose duties were of a custodial, clerical, or menial nature, and members of his or her immediate family, are not eligible for adjustment. 8 C.F.R. § 245.3.

Although the Director denied the application solely because the evidence did not demonstrate that compelling reasons render the Applicant unable to return to Bangladesh, 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 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). 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.[2] 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 an "[redacted]" at the Consular General of Bangladesh in New York. In his own statement, the Applicant stated that he worked "as an administrative officer in the Bangladesh Consulate." During his adjustment interview before a U.S. Citizenship and Immigration Services (USCIS) immigration officer the Applicant testified that while employed at the consulate he was an "office assistant" and processed passports for those residing in the United States, and visas for those intending to travel to Bangladesh. He also stated that he was not considered to be a high-ranking diplomat active in negotiations.

The Applicant's testimony and supporting documentation does not indicate that his job responsibilities were related to negotiations between national governments, foreign policy issues, or other diplomatic functions. Rather, it appears that his duties primarily involved clerical and administrative support of consular functions. 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

[2] *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.

concern the country of accreditation only and not diplomacy between governments. The Applicant therefore has not established that while he was employed at the consulate he performed diplomatic or semi-diplomatic duties, as required for adjustment of status under Section 13.

We normally would stop our review after determining that the Applicant has not satisfied the threshold requirement of showing that he performed diplomatic or semi-diplomatic duties; however, because the Director's decision addressed the issue of compelling reasons alone, we will address that issue as well below.

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 noncitizen 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 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 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 states that he is unable to return to Bangladesh because he has been "falsely accused of entering false information on Bangladesh citizens' passports." In support, the Applicant submits on appeal court documents establishing that a complaint was filed against him after an investigation by the "Anti-Corruption Commission" in [redacted] Bangladesh. The Applicant also asserts that his family is doing well in the United States; he is employed, his wife is pregnant, and his two daughters are excelling academically and have grown accustomed to the American way of life.

We acknowledge the Applicant's statements and supporting documentation submitted on appeal. 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 Bangladesh during his diplomatic posting that prevents him from returning there. Moreover, there is nothing in the record to indicate that the current government of Bangladesh is targeting former diplomats, or that the Applicant would not be afforded the government protections available to other citizens of Bangladesh because of his past employment at the consulate. Consequently, the Applicant has not demonstrated the existence of compelling reasons for his claimed inability to return to Bangladesh.

There are two independent bases for the Applicant's ineligibility to adjust status under Section 13, as he has not shown that he performed diplomatic or semi-diplomatic duties, and he has not demonstrated the existence of compelling reasons that render him unable to return to Bangladesh. Because the Applicant is ineligible for adjustment of status under Section 13 on those grounds, we need not address

at this time whether he has established that his adjustment of status is in the national interest or whether approval of his Form I-485 would be warranted as a matter of discretion.[3]

ORDER: The appeal is dismissed.

[3] Instead, we reserve those issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).