U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21899396

Date: MAY 12, 2022

Appeal of National Benefits Center Decision

Form I-485, Application to Adjust Status

The Applicant is a citizen of Honduras 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[1] to adjust status if certain criteria are met.

The Director denied the Form I-485, Application to Adjust Status, concluding that the Applicant did not establish, as required, that there were compelling reasons preventing her return to Honduras. On appeal, counsel for the Applicant submits two briefs,[2] affidavits in support of the Applicant, documentation about country conditions in Honduras, and two non-precedent AAO decisions, and asserts that the Applicant will be in imminent danger upon arriving in Honduras because of her prior employment in the United States.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361.[3] Upon *de novo* review, we will dismiss the appeal because the Applicant has not met this burden.

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 noncitizen. 8 U.S.C. § 1255b; 8 C.F.R. § 245.3.[4]

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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] One brief was submitted with the appeal. A second brief was submitted in April 2022, in response to a March 3, 2022, "Reopening Notice" issued by the Director.

[3] *See* Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

[4] If the first three eligibility requirements are met, an applicant must also establish that: compelling reasons demonstrate

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

II. ANALYSIS

Although the Director denied the application solely because the Applicant did not demonstrate existence of compelling reasons that render her unable to return to Honduras, 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). We must therefore evaluate the position held and the duties performed to determine whether an applicant has demonstrated, as a threshold matter, that he or she performed the types of duties required of a position that is either diplomatic or semi-diplomatic.

The record reflects that the Applicant was admitted to the United States as an A-1 nonimmigrant to work as a [redacted]' from 2010-2012, and as a [redacted]' from 2012-2015, for the Consulate General of Honduras and she states that she maintained that status from December 2010, until November 2014, when she lost her job.[5] The Applicant confirmed in her July 19, 2019, sworn statement to an immigration officer that her specific duties entailed '[redacted]"

that the adjustment would be in the national interest and would not be contrary to the national welfare, safety, or security of the United States; and he or she is 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.

[5]The Applicant asserts that she lost her job when the Honduran government changed the requirements for foreign diplomats and she did not have the bachelor's degree that the new regulations required.

The Applicant, when asked if she was considered a high-ranking diplomat, also stated, "No I was only an assistant."

The record does not contain any evidence to suggest that during her employment as a [redacted] and [redacted] the Applicant represented Honduras in relations with U.S. Government officials, negotiated with U.S. Government representatives on behalf of Honduras, or performed duties in direct support of such activities. Based on the limited information provided, we cannot conclude that the Applicant performed diplomatic or semi-diplomatic duties during her service in the United States at the Consulate General of Honduras.

B. Compelling Reasons

A Section 13 applicant must show:

> *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.

8 U.S.C. § 1255b(b) (emphasis added). 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. We also recognize that there is no binding precedent that would settle this question. *See Jabateh v. Lynch*, 845 F.3d 332, 336 (7th Cir. 2017) (recognizing that the Board of Immigration Appeals does not have jurisdiction over Section 13 denials). Accordingly, it is instructive for us to look at the legislative history of the classification, as such history can be "helpful to corroborate and underscore a reasonable interpretation of the statute." *Matter of Punu*, 22 I&N Dec. 224, 227 (BIA 1998) (citing *Weinberger v. Rossi*, 456 U.S. 25, 32 (1982)).

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.[6] 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 by the Immigration and Nationality Act Amendments of 1981.[7] Congress noted that this amendment "[r]eaffirms the original intent of Congress by requiring that the status of an alien diplomat cannot be

[6] Congress also capped the number of persons who could be granted permanent residency to 50 per year, and required that "[a] complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such adjustment of status. . . . " 8 U.S.C. § 1255b(c).

[7] Pub. L. No. 97-116, 95 Stat. 161. Note that this amendment was passed after the Refugee Act of 1980.

adjusted to permanent residence status . . . unless the alien has shown compelling reasons . . . ." H.R. Rep. No. 97-264 (1981).

The need for this "reaffirming" and corrective legislation is explained in the Congressional record. During 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. No. 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).

H.R. Rep. No. 94-1659 (1976) (emphasis added).

In keeping with the legislative history, we may consider only limited factors when determining whether a Section 13 applicant is unable to return to the country of accreditation. As this history shows, the phrase "unable to return" that was added to the statute in 1981 is linked to the purpose of the original 1957 legislation, which was to "provide for a limited class of aliens . . . who are left homeless and stateless" due to fundamental political upheavals. 103 Cong. Rec. 14,660 (1957). By including the phrase "are left homeless and stateless," Congress signaled its intention that the significant political change (e.g., Communist and other uprisings, aggressions, or invasion) in the country of accreditation would occur while an applicant is in valid A or G nonimmigrant status. Similarly, in requiring an applicant to have "failed to maintain [A or G] status," Congress believed the significant political change would necessarily result in an applicant's inability to continue representing his or her country in an official capacity. 8 U.S.C. § 1255b(a).

Thus, there is a causal relationship between the significant political change and the impossibility of return resulting from an applicant's official duties while in A or G nonimmigrant status. This relationship is rooted in Section 13's intended purpose, which is to provide lawful permanent resident status to individuals who performed diplomatic or semi-diplomatic duties for their countries of accreditation and would have been at risk of harm upon return to those countries because the governments they represented while in the United States underwent fundamental political change during the applicant's diplomatic service.

An applicant bears the burden of demonstrating not only the fundamental political change that occurred, but also the impossibility of return resulting from the applicant's official duties while in A or G nonimmigrant status. *See* section 291 of the Act (providing that the applicant bears the burden of demonstrating eligibility for the immigrant or nonimmigrant classification that he or she seeks).

We recognize 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 career goals, or educational and employment opportunities for themselves or their family members that may not be available in the countries of accreditation. However, we believe that such an interpretation is correct 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.[8]

In an undated statement, the Applicant asserted that she is unable to return to Honduras because she fears for her and her family's safety. She detailed that in [redacted] 2006, when she was 16 years old, she was kidnapped and raped by several men, all wearing police uniforms, who held her captive for 48 hours. She further maintained that the perpetrators stated that their actions were because of her father, who she contended was a Honduran congressman in [redacted] She further asserted that the kidnappers called her father and asked him to pay a certain amount of money to release her and told him to not contact the police or they would hurt the Applicant more. She was ultimately released and was able to contact her father, who picked her up. Her father went to the police station to report what had happened. [redacted] The Applicant also stated that before the above-referenced incident, men would call the home and say that if her father did not withdraw from the [redacted] Party of Honduras, they would kill him and they would hurt him where it would be the most painful. She concluded her statement by noting that Honduras is one of the most dangerous countries in the world, if not the most dangerous, and she is very afraid to return and live in Honduras with her children.

The Director denied the application, concluding that the Applicant did not establish that her reasons for being unable to return to Honduras were "compelling" in the context of Section 13, as the Applicant did not explain if and why she would be targeted by the current government in Honduras, or whether she was at risk of harm based on her past diplomatic status, political activities, or other related reasons.

On appeal, counsel for the Applicant maintains that the Applicant is unable to return to Honduras because she "lost her job after a new president and administration came to power" and she "was kidnapped and held for ransom" and "her father who was a [redacted] congressman was extorted for her release." [redacted]

As stated above, compelling reasons in the context of Section 13 do not encompass overall adverse country conditions. They must relate to a fundamental political change that constrains a former diplomat from returning to the country of accreditation based on his or her prior diplomatic service. The evidence is insufficient to show the existence of such reasons here.

The Applicant in this matter provided no testimony indicating that she might be targeted by the government in Honduras for performing her duties with the Consulate General of Honduras while in the United States. We note that the events referenced by the Applicant occurred in 2006, years before she obtained her position with the Consulate General of Honduras and entered the United States with an A-1 nonimmigrant visa, and do not relate to her functions while working for the Consulate General of Honduras. Furthermore, the record indicates that in October 2008, during an interview with an immigration officer, the Applicant claimed no fear of returning to Honduras.

[8] We note that an applicant's ineligibility for Section 13 classification does not preclude him or her from seeking a valid immigration status through other means (e.g., asylum).

The Applicant has not provided substantive evidence on appeal to establish that she would be targeted for her work with the Consulate General of Honduras and that she is unable to return to Honduras for compelling reasons related to her past employment in the United States on behalf of the Honduran government. Additionally, she does not identify any political upheavals in the country represented by the government which accredited her that occurred after she was admitted to the United States as an A-1 nonimmigrant that renders her, in effect, homeless or stateless. We acknowledge the Applicant's claim that she is concerned for her and her children's safety were she to return to the country where she was kidnapped and raped and held for ransom in 2006, and where violent crime and gang activity persist. However, the ongoing violence in the country of accreditation, even where that violence may have worsened during the Applicant's service, is not the type of reason considered compelling under Section 13. The type of generalized and ongoing violence referenced by the Applicant on appeal is not the type of reason contemplated under Section 13, which relates to "communist and other uprisings, aggression, or invasion," which has in some cases wiped out governments and left "worthy persons" homeless and stateless.

Based on the above, we conclude that the evidence before us is insufficient to show that the Applicant's reasons for being unable to return to Honduras are a result of a fundamental political change that because of the Applicant's prior diplomatic service would make her unable to return.

III. CONCLUSION

The Applicant is ineligible to adjust status under Section 13 on two separate bases, as she has not established that she performed diplomatic or semi-diplomatic duties while employed at the Consulate General of Honduras, and she has not demonstrated the existence of compelling reasons that render her unable to return to Honduras. Accordingly, we need not address whether the Applicant has shown that adjustment of status under Section 13 is in the national interest of the United States or whether she merits approval of the application as a matter of discretion.[9]

ORDER: The appeal is dismissed.

[9] Instead, we reserve those issues. Our reservation of the issues is not a stipulation that the Applicant meets these requirements and should not be interpreted as such. Rather, as the Applicant does not qualify for adjustment of status under Section 13 for the reasons discussed above, there is no constructive purpose in considering whether she satisfies the remaining criteria for such adjustment, because it would not change the outcome.