U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22436884

Date: SEPT. 27, 2022

Appeal of National Benefits Center Decision

Form I-485, Application to Adjust Status

The Applicant, a citizen of [redacted] seeks lawful permanent resident status 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, as required, that there were compelling reasons preventing her return to [redacted].

On appeal, the Applicant submits additional evidence and asserts that the situation in [redacted] has gravely worsened in the last two years because the former government is back in power, and she believes she and her children will be targeted once they return there.

The Applicant has the burden of proof to demonstrate eligibility for adjustment of status to that of a lawful permanent resident under Section 13. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. 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(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* U.S. Department of State, *Directory of Visa Categories*, https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html

[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

Although the Director denied the application solely because the evidence did not demonstrate that compelling reasons render the Applicant unable to return to [redacted], we have identified additional bases of the Applicant's 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, and that her A-2 status had been terminated by the time she filed the instant adjustment application on December 1, 2017. Accordingly, we will address all three issues in this decision, as each is a separate basis of ineligibility for the requested benefit.

A. Failure to Maintain Status

A Section 13 applicant must not only have been admitted to the United States as an A-1, A-2, G-1, or G-2 nonimmigrant, but also must have failed to maintain that status. 8 U.S.C. § 1255b(a). Thus, an applicant's A or G status must have been terminated prior to the filing date of the Section 13 application. *See* 8 C.F.R. § 103.2(b)(1) (providing that an applicant must establish that all eligibility requirements for the immigration benefit have been satisfied as of the filing date and continuing through adjudication).

The U.S. Department of State's Visa Office advises U.S. Citizenship and Immigration Services (USCIS) of a principal's official position, as well as the dates of the onset and termination of the principal's and immediate family members' status.[3] Here, the Visa Office notified USCIS that the Applicant's A-2 status began on December 13, 2013, and that it was terminated on December 7, 2017. Because according to the Visa Office the Applicant's A-2 nonimmigrant status had not been terminated until December 7, 2017, the Applicant had not failed to maintain that status when she filed the instant adjustment application on December 1, 2017. Consequently, she is ineligible for lawful permanent residency under Section 13 on that basis alone.

B. 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 the word "diplomatic" is varied and broad. Nevertheless, thee 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.*

[3] *Instructions* for the Form I-566, Interagency Record of Request - A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status, at page 7.

(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.[4] Thus, we must 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-2 nonimmigrant to work as a "personal assistant to the [redacted] Consulate General in [redacted]." In her interview with a USCIS officer, the Applicant stated that she worked as a personal assistant to the Consul General, and that her duties consisted of receiving faxes, emails, and confidential documents; maintaining the Consul General's schedule, making appointments, and receiving guests; coordinating events with other organizations within the United States, and sending out invitations. The Applicant further testified that she also had to handle "trade work" because there were no other officers in the office, and to make agendas and appointments for visiting VIPs. Those statements alone do not provide sufficient detail to determine whether the Applicant personally engaged in activities related to negotiations between national governments or on foreign policy issues in the course of her employment; rather, they indicate that the Applicant's primary job duties involved performing administrative and clerical tasks. Although the Applicant indicated during the adjustment interview that she considered those duties to be semi-diplomatic, the record does not include any documents with additional information about her responsibilities or specific activities at the Consulate. The Applicant therefore has not established that she performed diplomatic or semi-diplomatic duties in the course of her employment at the [redacted] Consulate General in the United States.

C. Compelling Reasons

A Section 13 applicant must also show "[*c*]*ompelling reasons* demonstrating both that the applicant 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). 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

[4] *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.

States.[5] 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, consistent 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 record includes the Applicant's sworn statement in support of the adjustment of status request that she is unable to return to [redacted] because there have been killings and kidnappings there, and that she may be targeted as a public servant who had access to confidential information. The Applicant

[5] 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).

also testified that following the 2015 elections in [redacted] an investigation team came to the Consulate in 2016, and she had to give a statement concerning misappropriation of government funds. The Applicant explained that she was the only one who provided truthful testimony and that as a consequence she would be victimized and unable to find work in [redacted] As stated, the Director determined that these reasons were not compelling, and that the Applicant did not present specific reasons demonstrating that she or her immediate family members would be targeted by the government of [redacted] or that she was at the risk of harm because of her past government employment, political activities, or other related reasons.

On appeal, the Applicant clarifies that she was a personal assistant to the Consul General, a political appointee of the [redacted] government; as soon as the new government was elected in 2015, it established Financial Crimes Investigation Decision (FCID). She states that the purpose of FCID was to investigate corruption charges against the former [redacted] administration, and several high-ranking ministers were arrested as a result. The Applicant further states that FCID officers came to the Consulate and interrogated her for a long time asking questions concerning confidential matters, and she was very worried and scared; the investigators also told her that she might have to testify in court against the perpetrators. The Applicant claims that few others at the Consulate were questioned, and most of her colleagues who supported [redacted] accused her of being a "snitch." She further states that those who spoke against the government have gone missing, and she is very afraid for her and her daughters' lives. The Applicant adds that the situation in [redacted] has now gotten worse, because [redacted] is in power again and, as most human rights organizations have reported atrocities committed by politicians to cover up their wrongdoings, she is scared that once she returns to [redacted] she will be targeted "by the family members who were involved in the case." Lastly, she states that although she has an excellent career record as a [redacted] foreign ministry employee, she has decided that it is not worth to continue this employment if her life and the lives of those she loves are going to be in danger. In support, the Applicant submits two online articles. The first article indicates that extrajudicial killings had been the common practice before 2015, when [redacted] was the president, and this practice returned since his brother, [redacted] was elected president in 2019; the second article indicates that by 2021 [redacted] presidency and regime was fast eroding because of his handling of the COVID-19 pandemic, education, economy and other issues.

We acknowledge the Applicant's statements and the additional evidence she submits on appeal. However, it is not sufficient to establish the requisite compelling reasons that prevent her return to [redacted] Although the Applicant indicates that in 2015, when she was working at the Consulate a new government came into power, she has not stated how this change was so fundamental that it rendered her homeless or stateless. Moreover, while the Applicant related that FDCI interviewed her in 2016 concerning misappropriation of funds by the government that accredited her, she has not claimed that this had any effect on her continued employment at the Consulate; rather, the record reflects that in May 2016 the new [redacted] government requested the U.S. Department of State to extend the Applicant's A-2 nonimmigrant visa. Lastly, the Applicant testified at her adjustment of status interview that she subsequently traveled to [redacted] in September 2017 to visit her mother and returned to the United States without incident with her A-2 nonimmigrant visa.

As stated, the Applicant must establish that there was a fundamental political change in [redacted], *and* that her inability to return there as a result of that fundamental political change relates to the diplomatic or semi-diplomatic duties she performed on behalf of the government that accredited her. The

Applicant has not demonstrated that she meets those requirements, because she has not shown that while she held A-2 nonimmigrant status from 2013 through 2017 a fundamental political change occurred in [redacted], which left her in effect homeless or stateless because of her prior government employment as a personal assistant to the [redacted] Consul General.

III. CONCLUSION

The Applicant is ineligible to adjust status under Section 13 on three separate bases, as she has not shown that she failed to maintain her A-2 status before filing the instant application, and she also has not demonstrated that she performed diplomatic or semi-diplomatic duties, and that there are compelling reasons that prevent his return to [redacted] Accordingly, we need not address whether the Applicant merits adjustment of status under Section 13 in the national interest and as a matter of discretion.[6]

ORDER: The appeal is dismissed.

[6] Instead, we reserve those issues. Our reservation of the issues is not a stipulation that the Applicant meets these additional requirements and should not be interpreted as such. Rather, as the Applicant has not established that he meets the threshold eligibility criteria for adjustment under Section 13, there is no constructive purpose in considering whether she satisfies the remaining criteria for such adjustment, because it would not change the outcome.