



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

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

In Re: 21782653

Date: APR. 14, 2023

Appeal of National Benefits Center Decision

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

The Applicant, a native and citizen of Libya, seeks to adjust status to that of a lawful permanent resident (LPR) under Section 13 of the 1957 Immigration Act (Section 13). *See* Section 13, Pub. L. No. 85-316, 71 Stat. 642, amended by Pub. L. No. 97-116, 95 Stat. 161 (1981), 18 U.S.C. § 1255b. Under Section 13, a foreign national previously in diplomatic status (A or G visa holders), who performed diplomatic or semi-diplomatic duties and who establishes that there are compelling reasons why they (or an immediate family member) are unable to return to the home country, may be adjusted to LPR status if they are a person of good moral character and admissible to the United States, and if adjustment is in the national interest and not contrary to the national welfare, safety, or security.

The Director of the National Benefits Center denied the Form I-485, Applicant to Register Permanent Residence or Adjust Status (adjustment application), concluding that the Applicant did not establish compelling reasons why he would be unable to return to Libya. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 13 is an adjustment of status category for noncitizens who can demonstrate, in part: (1) failure to maintain A-1, A-1, G-1, or G-2 nonimmigrant status as of the application's filing date;¹ (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. § 245.3.²

¹ The A nonimmigrant classification is for diplomats and foreign government officials (principals) as well as their immediate family members. The G nonimmigrant classification is for employees of certain international organizations (principals) and their immediate family members. 8 C.F.R. § 214.2(a), (g).

² If the first three eligibility requirements are met, an applicant must also establish that: compelling reasons demonstrate 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.

The issue on appeal is whether the Applicant has established his inability, because of compelling reasons, to return to Libya. The record reflects that the Applicant was admitted to the United States in A-1 nonimmigrant status on November 12, 2012, to work for the Embassy of Libya in Washington, D.C. in the position of [REDACTED]. The Applicant's A-1 nonimmigrant status was terminated on November 30, 2014, and on January 27, 2015, he filed the instant adjustment application requesting LPR status under Section 13.

The Applicant mentioned that most of the members at the Libyan Embassy were from militias that brought down the Gaddafi regime, they were constantly requesting processing of financial transactions under the cover of fake missions, and they threatened him with severe consequences for noncompliance. He stated he put these groups under close surveillance, discovered they were working for militias in Libya, and reported them to the foreign minister in Libya. The Applicant described several individuals who threatened him due to decisions he made while at the Libyan Embassy. The Applicant also stated that he was unable to return to Libya due to his continued respect for a November 6, 2014 decision from the Libyan Supreme Court which declared the elected government unconstitutional. The Applicant provided emails with the U.S. Department of State from November 22, 2014, in which he communicated illegal actions of embassy personnel, an assassination threat made against him, and Libyan officials disseminating rumors against him. The Applicant asserted that political changes in Libya made it impossible for him and his family to return and there is currently armed conflict and lawlessness.

In his sworn statement before a USCIS officer, the Applicant mentioned he thinks his employment with the Embassy of Libya was terminated because the government was under pressure from militias who now control Libya; and he would be kidnapped and killed by militias if he returned to Libya. He further mentioned his house is being watched in Libya, according to his family there, and there are spies in Libya who will know if he returns.

The Director referenced the Applicant's claims related to his respect for the November 6, 2014 decision from the Libyan Supreme Court, the dissemination of rumors and lies against him, and fear of harm to him and his family. However, the Director concluded that the Applicant did not present specific reasons why he or his family members would be targeted by the Libyan government or would be at a risk of harm because of his past government employment, political activities, or other related reasons. The Director acknowledged the difficulties the Applicant might face upon return to Libya but explained that compelling reasons under Section 13 did not include general inconveniences and hardships associated with relocation, the risks or dangers experienced by the population as a whole, or a desire to remain in the United States. Based on the foregoing, the Director determined that the Applicant did not establish his inability, because of compelling reasons, to return to Libya.

On appeal, the Applicant submits a brief and material evidence including, but not limited to, an updated statement, letters related to embassy position appointments, and numerous documents related to country conditions in Libya. Considering the claims and evidence submitted on appeal relating to the Applicant's inability, because of compelling reasons, to return to Libya, we find it appropriate to remand the matter for the Director to determine if the Applicant has met this requirement. If the Director determines the Applicant has established his inability, because of compelling reasons, to return to Libya, then the Director shall consider whether the Applicant meets the remaining requirements to adjust status under Section 13.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis, which, if adverse to the Applicant, shall be certified to us for review.