U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25104379

Date: JUNE 2, 2023

Appeal of National Benefits Center Decision

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

The Applicant is a citizen of Venezuela 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 Form I-485, concluding that the Applicant did not establish as required that there were compelling reasons preventing her return to Venezuela. The matter is now before us on appeal.

On appeal, the Applicant submits a brief, and asserts that the previously provided evidence, including documentation in support of her asylum claim, establishes the risks and dangers she would face if she were to return to Venezuela.

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 noncitizen. 8 U.S.C. § 1255b(b); 8 C.F.R. § 245.3.

[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.

II. ANALYSIS

The record reflects that the Applicant was admitted to the United States in July 2009 as an A-1 nonimmigrant to work at the Venezuelan consulate in [redacted] as a vice-consul. Her employment at the consulate ended in January 2011, and in March 2011 the U.S. Department of State terminated her A-1 status. The Applicant subsequently filed the instant request for adjustment of status under Section 13. During her adjustment interview with a U.S. Citizenship and Immigration Services (USCIS) officer the Applicant testified that as a vice-consul she was in charge of administrative procedures, such as processing money transfers through the Venezuelan Commission for the Administration of Currency Exchange (CADIVI) and payment of pensions to Venezuelan retirees living in the United States, and that she also served as a liaison to the nationals of Venezuela who were either detained or imprisoned in the United States. The Applicant further testified that in the course of her duties at the consulate she became aware of various administrative irregularities and corruption; when she voiced her objection she was accused of being a traitor and a spy and forced to resign from her position. She stated that she thereafter returned to Venezuela and reported to the Foreign Ministry Office, and although her position was ultimately terminated in April 2011 she "kept that job until July 2011."[2] The record shows that in 2013 the Applicant again traveled to Venezuela, where she obtained a U.S. nonimmigrant visa (O-1). She was last admitted to the United States as an O-1 nonimmigrant in 2015. The Applicant testified that it would be dangerous for her and her family to return to Venezuela, because she provided information to the U.S. Government and Venezuelan media about the fraudulent activities and money laundering at the consulate, which implicated Nicolás Maduro, who is currently the president of Venezuela.[3]

In denying the Applicant's adjustment request, the Director determined that the claimed reasons for the Applicant's inability to return to Venezuela, were not considered "compelling" in the context of Section 13, and she did not present specific reasons demonstrating why she or her immediate family members would be targeted by the government of Venezuela, or show that she would be at risk of harm due to her past government employment, political activities, or other related reasons.

Although the Director denied the application solely because the Applicant did not demonstrate that compelling reasons render her unable to return to Venezuela, 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.

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[2] The Applicant testified in asylum proceedings that she returned to Venezuela in April 2011, where she remained there until January 2012, when she traveled back to the United States as a nonimmigrant visitor (B-2).

[3] We note that Nicolás Maduro served as a Minister of Foreign Affairs from 2006 to 2013, and as the vice president under Hugo Chávez's from 2012 to 2013. After Chávez's death in March 2013, Maduro assumed the presidency.

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. The regulation at 8 C.F.R. § 245.3 specifies 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.[4] 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.

Here, the Applicant testified that as a vice-consul she was responsible for processing money transfers and pension payments, and that she also assisted Venezuelan inmates and detainees in the United States. Aside from the Applicant's testimony, the record does not contain any additional information about her responsibilities as a vice-consul. The Applicant's description of her job duties does not indicate that she engaged in diplomatic negotiations between Venezuela and the United States or that she participated in any processes supporting such negotiations as part of her official duties at the consulate. Rather, it appears that her duties primarily involved clerical and administrative support of consular functions, such as transferring money to and from Venezuela and assisting Venezuelan nationals who were either detained or imprisoned in the United States. 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 concern the country of accreditation only and not diplomacy between governments. The Applicant therefore has not established that while she was employed at the consulate she performed diplomatic or semi-diplomatic duties, as required for adjustment of status under Section 13.

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.

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[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.

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 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. Thus, 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 for them to return to that country because of their 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 reiterates on appeal that if she were to return to Venezuela, she would likely be labeled a "traitor" for having provided confidential information about the fraudulent activities at the consulate,

which ultimately led to its closing in 2012.[5] In support, the Applicant resubmits previously provided evidence, which includes an undated printout of her personal data from the Venezuelan civil registry service, articles concerning the firing of the consulate's staff in 2011 for "a range of irregularities and corruption," and a 2020 Venezuela Country Report on Human Rights Practices. We acknowledge the resubmission of this documentation and the Applicant's statements. We also recognize that, as she points out, in March 2021 the Secretary of Homeland Security designated Venezuela for Temporary Protected Status upon determination that under Nicolás Maduro's influence the country has been in the midst of a severe political and economic crisis for several years and is currently facing a severe humanitarian emergency.[6]

However, as discussed, to establish the requisite "compelling reasons" the Applicant must show that (1) there was a fundamental political change in Venezuela during her diplomatic posting, *and* (2) her inability to return to Venezuela 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 these requirements, because she has not identified a fundamental political change that occurred in Venezuela while she held A-1 nonimmigrant status from July 2009 through March 2011, which left her in effect homeless or stateless because of her prior government employment as a vice-consul at the Venezuelan consulate in the United States.

III. CONCLUSION

There are two independent bases for the Applicant's ineligibility to adjust status under Section 13, as she has not shown that she performed diplomatic or semi-diplomatic duties in the United States, and she has not established compelling reasons that prevent her from returning to Venezuela. 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 demonstrated 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.[7]

ORDER: The appeal is dismissed.

[5] Public source information indicates that in 2018 Nicolás Maduro's ordered the Venezuelan Foreign Ministry to reopen the consulate, reversing a move by his predecessor Hugo Chávez.

[6] We note that in April 2023 the Applicant was granted Temporary Protected States until March 2024.

[7] 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.").