



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

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

In Re: 6288898

Date: AUG. 3, 2020

Appeal of National Benefits Center Decision

Form I-485, Application to Adjust Status

The Applicant is a citizen of El Salvador 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 foreign national 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 his return to El Salvador.

On appeal, the Applicant submits a personal statement and copies of previously provided evidence and reasserts that returning to El Salvador will put him at risk of retaliation by criminals and gang members because of his previous 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. 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 foreign nationals 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 foreign national. 8 U.S.C. § 1255b(b); 8 C.F.R. § 245.3.²

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 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 El Salvador, 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. Accordingly, we will 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.³ 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 a Vice Consul at a Salvadoran consulate in the United States. The Applicant testified in a sworn statement that while employed at the consulate he interviewed Salvadoran nationals who were detained by the U.S. Immigration and Customs Enforcement (ICE) on criminal charges. He also stated that before he was promoted to the position of the Vice Consul, he worked as an administrative assistant at another consulate where he was responsible for issuing passports. The Applicant attested that he was not involved in negotiations between nations in either of those positions, and that such negotiations were handled by his country’s embassy. Aside from the Applicant’s testimony, the record includes a letter from the ICE liaison to the consular office, who stated that the Applicant interviewed Salvadoran detainees on a daily basis to confirm their identity and nationality and was also responsible for issuing travel documents to those individuals to facilitate their removal from the United States. Neither the letter nor the Applicant’s testimony indicates that his responsibilities were related to negotiations between national governments, foreign policy issues,

³ 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.

or other diplomatic functions. Rather, it appears that the Applicant's duties primarily involved clerical and administrative support of consular functions, including assistance to Salvadoran nationals in removal proceedings and issuance of passports and travel documents. 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 he was employed at the consulate he 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.

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 States. 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, 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 testified in a sworn statement before a U.S. Citizenship and Immigration Services officer that he felt it was unsafe for him to return to El Salvador, because he interviewed many individuals with criminal backgrounds and gang members who may be under the impression that he was responsible for removing them from the United States and may retaliate against him and his family. The Director determined, however, that these reasons were not "compelling" in the context of adjustment of status under Section 13, as the Applicant did not demonstrate that they related to political changes in El Salvador or that he or any of his family members would be targeted by the Salvadoran government because of his past employment at the consulate or political activities.

On appeal, the Applicant reiterates that if he were to return to El Salvador with his family he would face substantial risks directly related to his prior employment, as he assisted in removing multiple criminals and gang members from the United States and the Salvadoran government will be unable to protect him from retaliation given the overall violence and lack of security in the country. He states that his family remaining in El Salvador has been paying "rent" to gangs and has no recourse, as gang members have infiltrated the local law enforcement. In support, he resubmits a letter from Amnesty International dated in 2011 and avers that the dangers associated with his prior exposure to criminals who may want to seek revenge and the overall chaos and lawlessness in El Salvador should be considered compelling reasons that make him unable to return there.

We have reviewed the entire record, and agree with the Director that it is insufficient to establish that there are compelling reasons, for Section 13 adjustment purposes, preventing the Applicant's return to El Salvador. The evidence indicates that the Applicant previously requested protection from Amnesty International claiming that he received threats by gangs and other organized crime groups in El Salvador and that he did not file a complaint with that country's authorities out of fear that doing so might only increase risks to his family living there because of links between police and gangs. In response, the organization explained that protecting one from criminal activity was solely within authority of the state government.

We acknowledge the Applicant's claim that he may be targeted by gang members when he returns to El Salvador; however, the risks or dangers related to general conditions in the country of accreditation are not considered compelling reasons for the purposes of Section 13 adjustment. Rather, as stated above, the Applicant must show there has been a fundamental political change in El Salvador, such that it makes his return there impossible because of his prior diplomatic status, and that he has been rendered homeless or stateless as a result. Here, the Applicant does not claim or submit evidence of a fundamental political change in El Salvador that precludes him from returning there due to the government position he once held. Consequently, the Applicant has not demonstrated the existence of compelling reasons for his claimed inability to return to El Salvador.

III. CONCLUSION

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 El Salvador. Because he is ineligible for adjustment of status under Section 13 for these reasons, we need not address whether he has established that his adjustment of status is in the national interest or whether he merits approval of his application as a matter of discretion.⁴

ORDER: The appeal is dismissed.

⁴ 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 has not established that he meets the two conditions for adjustment under Section 13 discussed above, there is no constructive purpose in considering whether he satisfies the remaining criteria for such adjustment, because it would not change the outcome.