



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

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

In Re: 9019649

Date: JUNE 16, 2020

Appeal of National Benefits Center Decision

Form I-485, Application to Adjust Status

The Applicant is a citizen of Bangladesh who seeks lawful permanent resident status 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.<sup>1</sup>

The Director of the National Benefits Center denied the application, concluding that the Applicant did not establish, as required, that his diplomatic status was terminated before he applied for adjustment in 2016.

On appeal, the Applicant submits a copy of his passport and asserts that he was last admitted to the United States as a G-1 nonimmigrant in 2014, and that he is therefore eligible to adjust status under Section 13.

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.<sup>2</sup>

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<sup>1</sup> 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>.

<sup>2</sup> 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 the Applicant's G-1 status had been terminated before he filed the instant application, 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. 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 Director concluded that the Applicant did not establish he met the above requirement, because he was admitted to the United States in G-1 status after filing the adjustment application in March 2016, and he did not provide evidence that the U.S. Department of State terminated his diplomatic status. The Applicant asserts that he did not travel outside of the United States following his last entry in 2014, and the Director's determination was therefore in error. In support, he submits a copy of his passport issued in 2016, which does not reflect any foreign travel.

The passport evidence, however, is insufficient to establish that the Applicant failed to maintain his G-1 status before he applied for adjustment. 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 A or G status. Here, the Visa Office notified USCIS that the Applicant's G-1 status began on November 8, 2010, but has not been terminated and remains active. We recognize the Applicant's previous testimony that his employment at the Permanent Mission of Bangladesh to the United Nations ended in February 2016, as well as a letter from the Bangladeshi Ministry of Foreign Affairs confirming that he has been released from the Mission on February 19, 2016. However, because the Applicant's G-1 status remains active according to the Visa Office, he had not failed to maintain that status prior to the filing of the adjustment application in March 2016. The Applicant is therefore ineligible for lawful permanent residency under Section 13 on that basis.

### B. Diplomatic or Semi-Diplomatic Duties

In addition, 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.

Here, the record reflects that the Applicant was admitted to the United States in G-1 status to work as a [REDACTED] at the Permanent Mission of Bangladesh to the United Nations. The Applicant testified during his adjustment interview that he performed duties of an administrative assistant, which included working as a receptionist and sometimes going to the airport to do "some specific portable maintenance." Aside from the Applicant's testimony, the record before us does not contain any additional information about his responsibilities as a [REDACTED]. While the Applicant previously submitted a letter of appointment from the Bangladeshi Ministry of Foreign Affairs, the letter does not provide a description of his role or job duties. Rather, it confirms only that he joined the Permanent Mission of Bangladesh to the United Nations in New York in November 2010. The Applicant does not claim that while he was working at the United Nations he represented Bangladesh in relations with U.S. Government officials, negotiated with U.S. Government representatives on behalf of Bangladesh, or performed duties in direct support of such activities.

Based on the above, we conclude that the Applicant has not established, as required, that he performed diplomatic or semi-diplomatic duties in the course of his employment in the United States.

### III. CONCLUSION

The Applicant is ineligible to adjust status under Section 13 on two separate bases, as he has not shown that he failed to maintain his G-1 status before filing the instant application, and he also has not demonstrated that he performed diplomatic or semi-diplomatic duties. Accordingly, we need not address whether the Applicant has established the existence of compelling reasons that prevent his return to Bangladesh, and whether he merits adjustment of status under Section 13 in the national interest and as a matter of discretion.<sup>3</sup>

**ORDER:** The appeal is dismissed.

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<sup>3</sup> 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 criteria 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.