



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

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

In Re: 7953789

Date: AUG. 21, 2020

Appeal of National Benefits Center Decision

Form I-485, Application to Adjust Status

The Applicant is a citizen of Nepal 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 he performed diplomatic or semi-diplomatic duties in the course of his employment in the United States with the government of Rwanda and that there were compelling reasons precluding his return to Nepal. On appeal, the Applicant submits additional evidence and asserts that he and his family will be persecuted in Nepal by the current ruling party.

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

The issues to be decided are whether the Applicant has established: (1) performance of diplomatic or semi-diplomatic duties on behalf of accrediting country or countries and (2) existence of compelling reasons that render him unable to return to Nepal.

The record reflects that the Applicant was admitted to the United States in 2008 as a G-1 nonimmigrant to work as a chauffeur and messenger at the Permanent Mission of Nepal to the United Nations, and that he was later employed as a driver for the Permanent Mission of Rwanda to the United Nations until his contract ended in late 2014. In a 2017 sworn statement before a U.S. Citizenship and Immigration Services (USCIS) officer, the Applicant testified that he was unwilling to return to Nepal in part because he did not have any property there, he was concerned about the safety of his children, and his parents were targeted in 2003 or 2004 when he first started working for the government in Nepal. However, as the Applicant did not explain specifically why his family would be at risk of harm by the Nepalese government and did not present evidence to corroborate his claim of attacks against his parents, the Director determined that the Applicant did not establish compelling reasons for his unwillingness to return to Nepal. The Director further found that the Applicant also did not demonstrate that his job responsibilities as a driver for the Permanent Mission of Rwanda were diplomatic or semi-diplomatic, as the evidence was insufficient to show that his job involved direct support of formal advisory or decision-making activities rather than custodial, clerical, or menial duties.

On appeal, the Applicant does not address the Director's finding concerning the nature of his employment with the Rwandan government, but claims that he will be subject to persecution by the current ruling party upon return to Nepal. In support, he submits a personal statement, affidavit from his mother, and a copy of a letter he claims was mailed to his address in Nepal.

We have reviewed the entire record, including these additional documents and conclude that the reasons for the denial have not been overcome. Furthermore, although not specifically discussed in the Director's decision, the evidence also does not show that the Applicant performed diplomatic or semi-diplomatic duties while he was employed in the United States with the Permanent Mission of Nepal to the United Nations. We will therefore address both issues on appeal, 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. 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.

As stated, the Applicant was admitted to the United States in G-1 status to work as a chauffeur and messenger for the Nepali Permanent Mission to the United Nations. He testified during his adjustment interview with USCIS that his job required him to deliver mail, drive diplomats to different locations, and help manage their schedules and arrange meetings. The evidence includes a previously submitted letter from the Second Secretary to the Permanent Mission confirming that these were the Applicant's primary duties, and that he "has performed several semi-diplomatic tasks also[,] such as protocol and consular matters." The letter does not specify, however, what those tasks were, and the Applicant has not provided any examples of work beyond his regular job responsibilities. Thus, neither the letter, nor the Applicant's testimony establish that his primary job duties as a chauffeur and messenger for the Nepali mission were semi-diplomatic. Furthermore, the Applicant has not claimed or submitted evidence that he performed diplomatic or semi-diplomatic duties while he was working as a driver for the Permanent Mission of Rwanda to the United Nations in 2014. Although he indicated during the adjustment interview that he considered himself a semi-diplomat, he attested that he was never involved in negotiations between nations, and the record does not contain any documentation to suggest that the Applicant represented either Nepal or Rwanda in relations with other countries, negotiated with representatives of foreign governments on behalf of Nepal or Rwanda, or performed duties in direct support of such activities.

The Applicant therefore has not established that he performed diplomatic or semi-diplomatic duties in the course of his employment with the Nepali or Rwandan Permanent Missions to the United Nations.

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.³ 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.

³ 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).

The record includes the Applicant's sworn statement and declarations in support of the adjustment of status request that he is unable to return to Nepal because when he worked as a driver for a government official in Nepal prior to 2008 he and his parents were targeted by the [] Party, which he refused to join. The Applicant also claimed that it would be difficult for him to protect his spouse and children in Nepal due to ongoing political crisis, and that he would not be able to find a good job to support his family. As stated, the Director determined that these reasons were not compelling, as there was no evidence that the Applicant or his family members were specifically targeted by the current Nepali government because of the Applicant's past employment with the Permanent Missions to the United Nations, political activities, or other related reasons.

The Applicant now submits a personal statement, in which he claims for the first time that in 2014, when he was in the United States the local members of the [] group of the Nepal Communist Party (NCP) visited his house in Nepal demanding donations and pressing him to join their party. According to the Applicant, these individuals threatened to harm him because he refused the requests from the party leaders visiting the United States to join them and collect donations on their behalf in the United States. He further states that in April 2018, the NCP sent a threatening letter to his home in Nepal demanding him to return to Nepal and explain his past actions, pay donations, and support the []. According to the Applicant, the local police refused to investigate the matter, advising his mother that they were instructed by the Ministry of Foreign Affairs to find out about his activities in the United States, which they claimed were harmful to the ruling party. In support, he submits a copy of the letter from the NCP (which has not been authenticated) and an affidavit from his mother who currently lives in Nepal. The letter indicates generally that the Applicant has been "involved in activities harmful to [the] Party" and "such types of [his] activities will not be acceptable." The letter further instructs the Applicant to "provide financial and physical support to [the] Party," and warns that if he does not he will be listed as the enemy and "as per our Party Policy" action will be taken against him and his family in Nepal.

The Applicant's mother attests that [] cadres have been frequently visiting her home since 2014 and threatening physical harm to the whole family. She states that the local police last came to her house in 2018 to inquire about the Applicant, and the NCP members recently threatened to take physical action against her if the Applicant did not join the party. The Applicant does not explain, however, the specific harmful activities he was involved in the United States aside from his claimed refusal to join the party or collect donations on its behalf. Nor does he submit any evidence to show that the NCP has a policy of listing individuals who do not actively support the party as "enemies," or that such individuals may face specific adverse consequences sanctioned by the Nepali government. Most importantly, the Applicant does not identify any fundamental political change occurring in Nepal that renders him homeless or stateless. Furthermore, the record includes a copy of his 2012 Nepali passport issued at a Consulate of Nepal in the United States, which remains valid at this time. The fact that the Applicant was issued a passport by his country's government despite his alleged actions against the ruling party and associated threats of retaliation further undermines his claim that he will be at risk of harm by that party and, thus, the government if returns to Nepal. The possession of a valid national passport also indicates that the Applicant is not "stateless." Based on the above, we conclude that the overall evidence is insufficient to establish that the Applicant will be subject to persecution by the current government once he returns to Nepal because of his prior employment with the Permanent Missions to the United Nations and related activities.

Moreover, the Applicant's current claims of persecution by the ruling party since 2014 are inconsistent with his previous testimony. Specifically, in his initial declaration from December 2014, the Applicant stated that he did not want to return to Nepal out of financial considerations and concern for the safety and cultural readjustment of his children, one of whom was born in the United States. Although he indicated generally that the country was undergoing political crisis, he did not claim that he was pressured to join the [] or that his family was threatened. Similarly, in his declaration dated in September 2015, the Applicant stated that his unwillingness to return to Nepal was related to the strained economic and political situation in the country, as well as possible difficulties in finding a well-paying job there. Furthermore, he attested that although he lost his house in Nepal as a result of the 2015 earthquake, the government provided temporary housing and assistance to his family living there. This testimony is inconsistent with the Applicant's current claims that his family was targeted by the government since 2014. Moreover, while during the adjustment interview the Applicant indicated that his parents were persecuted in Nepal in 2003 or 2004, he did not offer any further details about the perpetrators, nor did he mention any threats to his family from the [] in 2014. The Applicant does not explain his inconsistent testimony and he does not offer independent, objective evidence pointing to where the truth lies. See Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988) (providing that the applicant must resolve any incongruities in the record).

Based on the above, we conclude that the preponderance of the evidence before us is insufficient to show that the Applicant has been rendered homeless or stateless due to a fundamental political change in Nepal, and that he is unable to return there because of his prior employment with the Permanent Mission of Nepal in the United Nations. We acknowledge the Applicant's prior statements that the conditions in Nepal are adverse, and that he would like to remain in the United States to provide a safe environment for his children and maintain his current employment. However, we must interpret the phrase "compelling reasons" consistently with congressional intent, which does not include the general conditions in the accrediting country or better opportunities for the Applicant and his family members in the United States. Consequently, the Applicant has not demonstrated that there are compelling reasons preventing him from returning to Nepal.

III. CONCLUSION

The Applicant is ineligible to adjust status under Section 13 on two separate bases, as he has not established that he performed diplomatic or semi-diplomatic duties while employed at the Nepali and Rwandan Permanent Missions to the United Nations, and he has not demonstrated the existence of compelling reasons that render him unable to return to Nepal. Accordingly, we need not address whether the Applicant has shown that adjustment of status under Section 13 is in the national interest of the United States or whether he merits approval of the 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 does not qualify for adjustment of status under Section 13 for the reasons 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.