



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

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

In Re: 10064567

Date: JUNE 16, 2020

Appeal of National Benefits Center Decision

Form I-485, Application to Adjust Status

The Applicant is a citizen of Pakistan 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 denied the Form I-485, concluding that the Applicant did not establish, as required, that there were compelling reasons preventing his return to Pakistan. On appeal, the Applicant submits additional evidence and asserts that he and his family will be in imminent danger upon arriving in Pakistan because of his prior 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 Applicant did not demonstrate existence of compelling reasons that render him unable to return to Pakistan, 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. 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. 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.

The record reflects that the Applicant was admitted to the United States as a G-1 nonimmigrant to work as a [redacted] for the Pakistani Permanent Mission to the United Nations. The Applicant confirmed in his sworn statements that his job was to [redacted] and the record does not contain any evidence to suggest that during his employment as a [redacted] the Applicant represented [redacted] in relations with U.S. Government officials, negotiated with U.S. Government representatives on behalf of [redacted] or performed duties in direct support of such activities.

The Applicant therefore has not established that he performed diplomatic or semi-diplomatic duties, as required under Section 13.

B. Compelling Reasons

Section 13 also requires an applicant to establish “[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, 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

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).

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 record includes the Applicant's declaration and sworn statement that he is unable to return to Pakistan because after spending many years in the United States he would be perceived as wealthy and targeted for extortion. In addition, terrorist groups have demanded money from the Applicant's family in the past due to his employment in the United States and he cannot rely on the government or police to protect his family, as discrimination and corruption are rampant in Pakistan. The Director found that the Applicant did not establish these reasons were "compelling" in the context of Section 13, as he did not explain if and why he would be targeted by the current Pakistani government, or whether he was at risk of harm based on his past diplomatic status, political activities, or other related reasons.

The Applicant asserts on appeal that there is a significant danger to him and his family due to the political change in Pakistan since his assignment as a [REDACTED] which was prior to the growing control of terrorist groups, such as the Taliban. He further states that these terrorist groups are constantly threatening to seize his land in Pakistan, and that he had received death threats when he last traveled there in 2012. The Applicant claims that if he were to return to Pakistan he would be rendered stateless or homeless and forced to live in hiding because of terrorism, violence, and human rights abuses the government is unable or unwilling to control. Moreover, his children were raised in the United States; upon return they would be seen as American and targeted for harassment and persecution. In support, the Applicant resubmits statements from his two relatives living in Pakistan and a 2018 Human Rights Report for Pakistan issued by the U.S. Department of State.

The Applicant does not provide evidence to corroborate his claim of a fundamental political change in Pakistan after he was admitted to the United States as G-1 nonimmigrant that has made him, in effect, stateless or homeless because of his previous employment as a [REDACTED]. Rather, he indicates that he fears the terrorist threats in his home country and the government's inability to protect him from those threats. We acknowledge that according to the Human Rights Report terrorist violence and human rights abuses by nonstate actors contribute to human rights problems in Pakistan, and that they often go unpunished due to lack of government accountability. However, compelling reasons in the context of Section 13 do not encompass overall adverse country conditions. As stated above, they must relate to a fundamental political change that constrains a former diplomat from returning to the country of accreditation based on his or her prior diplomatic service. The evidence is insufficient to show the existence of such reasons here. In addition, while the Applicant's relatives claim that in 2011 "some Taliban people/militants" came to their home and demanded money, neither indicates that this was related to the Applicant's employment with the government of Pakistan, and the Applicant explained in his 2019 sworn statement that the reason for the extortion was not his specific role at the Pakistani Permanent Mission, but the perception that he had a lot of money because he was working in the United States.

We also recognize the Applicant's claim that he is concerned for the safety of his daughters, because the Pakistani authorities do not adequately protect women's rights and his daughters might be subject

to discrimination and potential harm; however, such fears related to general conditions or safety in the country of accreditation are not considered compelling reasons that render a former diplomat unable to return to that country. Rather, the Applicant must show that he is unable to return to Pakistan for compelling reasons related to his past employment in the United States on behalf of the Pakistani government. As discussed, the Applicant has not demonstrated that such reasons exist in his case, because he has not shown that there has been a fundamental political change in Pakistan since he was granted G-1 nonimmigrant status that renders him unable to return to his home country because his prior service as a

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, and he has not demonstrated the existence of compelling reasons that render him unable to return to Pakistan. Accordingly, we need not address whether the Applicant has shown that adjustment of status under Section 13 is in the national interest 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 meet the two criteria for adjustment of status under Section 13 discussed above, there is no constructive purpose in considering whether he satisfies the remaining criteria, because it would not change the outcome.