U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-Q-N-

DATE: NOV. 4, 2015

APPEAL OF NATIONAL BENEFITS CENTER DECISION

APPLICATION: FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS

The Applicant, a native and citizen of Afghanistan, seeks to adjust status to Lawful Permanent Resident. *See* Section 13 of the Act of September 11, 1957, Pub. L. No. 85-316, 71 Stat. 642, *amended by* Pub. L. No. 97-116, 95 Stat. 161 (1981), 18 U.S.C. § 1255b. The Director, National Benefit Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the application for adjustment of status after determining that the Applicant had failed to establish compelling reasons why he is unable to return to Afghanistan. The Director also noted that on April 4, 2014, the U.S. Department of State issued its opinion recommending that the Applicant's request for adjustment of status under Section 13 of the Act be denied because the Applicant presented no compelling reasons why he is unable to return to Pakistan. *Decision of the Director,* dated July 1, 2014.

On appeal, the Applicant asserts that the Director applied an improper legal standard by relying on the legislative history rather than the plain language of Section 13 to narrow the class of diplomats eligible for relief. The Applicant further contends that even under the Director's narrower interpretation of the statute, he has established compelling reasons why he is unable to return to Afghanistan. The Applicant submits additional evidence in support of the appeal.

Section 13 of the Act of September 11, 1957, as amended on December 29, 1981, by Pub. L. 97-116, 95 Stat. 1161, provides, in pertinent part:

> (a) Any alien admitted to the United States as a nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Act, who has failed to maintain a status under any of those provisions, may apply to the Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.
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> (b) If, after consultation with the Secretary of State, it shall appear to the satisfaction of the Attorney General that the alien has shown compelling 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, that the alien is a person of good moral character, that he is admissible for permanent residence under the Immigration and Nationality Act, and that such action would not be contrary to the national welfare, safety, or security, the Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

8 U.S.C. § 1255(b).

Pursuant to 8 C.F.R. § 245.3, eligibility for adjustment of status under Section 13 is limited to aliens who were admitted into the United States under section 101(a)(15)(A)(i), (a)(15)(A)(ii), (a)(15)(G)(i), or (a)(15)(G)(ii) of the Act who performed diplomatic or semi-diplomatic duties and to their immediate families, if they establish that there are compelling reasons why the applicant or the applicant's immediate family member is unable to return to the country represented by the government that accredited the applicant and that adjustment of the applicant's status would be in the national interest. Aliens whose duties were of a custodial, clerical, or menial nature and members of their immediate families are not eligible for benefits under Section 13.

The legislative history for Section 13 reveals that the provision was intended to provide adjustment of status for a "limited class of . . . worthy persons . . . left homeless and stateless" as a consequence of "Communist and other uprisings, aggression, or invasion" that have "in some cases . . . wiped out" their governments. Statement of Senator John F. Kennedy, *Analysis of Bill to Amend the Immigration and Nationality Act*, 85th Cong., 103 Cong. Rec. 14660 (August 14, 1957). The phrase "compelling reasons" was added to Section 13 in 1981 after Congress "considered 74 such cases and rejected all but 4 of them for failure to satisfy the criteria clearly established by the legislative history of the 1957 law." H. R. Rep. 97-264 at 33 (October 2, 1981).

A review of the record establishes the Applicant's eligibility for consideration under section 13 of the 1957 Act. The Applicant was admitted to the United States with an A1 nonimmigrant visa and thereafter served as the [redacted] at the Embassy of Afghanistan in [redacted] from September 10, 2010 until his status was terminated by the U.S. Department of State on June 21, 2013. The Applicant filed the application to adjust status under Section 13 on July 22, 2013. Therefore, the Applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(i) of the Act but no longer held that status at the time of his application for adjustment of status on July 22, 2013, as required by section 13(a) of the 1957 statute.

As such, the only issues before us are whether the record also establishes that the Applicant has compelling reasons that preclude his return to Afghanistan and that his adjustment of status would serve U.S. national interests – the requirements of section 13(b) of the 1957 Act.

The Applicant asserts that the Director erred as a matter of law in his decision to deny the application by relying on the legislative history and ignoring the plain meaning of the phrase "compelling reasons." The Applicant states that by relying on the legislative history, the director "impermissibly narrowed the

meaning of that phrase." The Applicant argues that had Congress intended only to provide Section 13 relief to a more narrow class of diplomats whose governments were overthrown by coup d'état or who are stateless or cannot return for political reasons, it would have written the statute more narrowly. The Applicant states that courts have routinely relied on the dictionary for help in determining whether a word in a statute has a plain or common meaning, and according to the Merriam-Webster Dictionary, the word "compelling" means "forceful" or "convincing." Based on this definition, the Applicant contends that he has established compelling reasons why he cannot return to Afghanistan.

The finding that Congress intended that compelling reasons relate to political changes that render diplomats and foreign representatives at risk of harm following political upheavals is supported by the legislative history of Section 13 and is consistent with the purpose of the statute. Although legislative statements have less force than the plain language of the statute, such statements are helpful to corroborate and underscore a reasonable construction of the statute. *See Matter of Punu*, 22 I&N Dec. 224, 227 (BIA 1998) (citing *Weinberger v. Rossi,* 456 U.S. 25, 32 (1982)). The Board of Immigration Appeals (BIA) has looked at legislative history to determine whether an interpretation of statutory language is supported by the legislative history and therefore consistent with the purpose of the statute. *See Matter of Sosa Ventura,* 25 I&N Dec. 391, 393-94 (BIA 2010); *Matter of Avila-Perez,* 24 I&N Dec. 78, 83 (BIA 2007) (stating that when statutory language is unclear, the BIA considers legislative history to help determine congressional intent); *see also INS v. Cardoza-Fonseca*, 480 U.S. 421, 433, fn. 12 (1987) (finding that even where the meaning of a statutory provision appears to be clear from the plain language of the statute, it is appropriate to look to the legislative history to determine "whether there is 'clearly expressed legislative intention' contrary to that language. . ."); *Rosenberg v. Fleuti,* 374 U.S. 449, 460-62 (1963) (looking beyond the plain words of the statute in construing the intent exception to section 101(a)(13) of the Act and relying on legislative history to determine the general purpose of Congress in enacting the provision).

The legislative history and the statutory language as a whole support an interpretation of Section 13 that those eligible for adjustment of status are those diplomats that are unable to return to and live in their respective countries because of compelling reasons that relate to political changes that render them "stateless" or "homeless" or at risk of harm following political upheavals. We therefore find no error in the Director's determination.

In the various statements submitted in support of his application and on appeal, the Applicant states that the reason why he cannot return to Afghanistan is that the Taliban threatened to kill him because of his employment with the government of Afghanistan in the United States. The Applicant states that when he was appointed to the position, the Taliban asked him to reject the position, and when he refused, they then told him to resign from the position and threatened to kill him if he did not. The Applicant claims that they kidnapped his nephew on November 30, 2011 and released him the same day to deliver a message to him that if he did not resign, they would kill him. On April 30, 2013, the Applicant claims that the Taliban contacted his brother on the phone and told his brother that they are waiting for the Applicant to resign his position with the government and return to Afghanistan. They also accused the Applicant of working for the corrupt Karzai government. On May 11, 2013, the applicant states that the Taliban delivered a letter to his home in Afghanistan condemning him to death because he refused to

obey them. He claims that in the letter, the Taliban also accused him of spying for the United States and of violating Sharia law.

The evidence of record, including the information submitted on appeal, does not establish compelling reasons why the applicant is unable to return to Afghanistan. As indicated above, the legislative history of Section 13 shows that Congress intended that "compelling reasons" relate to political changes that render diplomats and foreign representatives "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which accredited them.

The Applicant claims that he would be killed by the Taliban because of his employment with the government of Afghanistan and that he and his family have been threatened by the Taliban because he refused to resign his diplomatic position with the government and return to Afghanistan. The harm the applicant fears is related to an armed conflict that was ongoing when the Applicant was assigned his diplomatic post in the United States in 2010 and continued while he resided in the United States. The U.S. Department of State reports that after taking power in 1996, the Taliban operated one of the most repressive regimes in the world until they were driven from power by a U.S.-led coalition in October 2001. *See U.S. Department of State, Office of the Coordinator for Counterterrorism, Patterns of Global Terrorism,* May 21, 2002. The Department of State reported that in 2009, the security situation in Afghanistan deteriorated significantly, with Taliban and insurgent attacks increasing and armed conflict spreading to almost one-third of the country. *See U.S. Department of State, 2009 Country Reports on Human Rights Practices – Afghanistan,* March 11, 2010 ("2009 Country Report"). The 2009 Country Report further states, "The marked deterioration in security posed a major challenge for the central government, hindering its ability to govern effectively, especially in rural areas. . . . Insurgents deliberately targeted government employees and aid workers. Efforts to contain the insurgency by military and nonmilitary means continued."

In the *2014 Country Report on Human Rights Practices,* The U.S. Department of State states that significant human rights problems in Afghanistan include indiscriminate attacks on civilians and killings of persons affiliated with the government by armed insurgent groups. The report further states that insurgents deliberately targeted government employees and aid workers and that the Taliban continued to distribute threatening messages in attempts to curtail government and development activities. A 2014 report by the U.N. Office of the High Commissioner for Human Rights and the U.N. Assistance Mission in Afghanistan submitted by the Applicant also describes the ongoing armed conflict in Afghanistan between anti-government elements (the Taliban and other armed groups) and the Afghan security forces and its impact on civilians. *Afghanistan Midyear Report 2014 – Protection of Civilians in Armed Conflict,* July 2014.

The evidence in the record, including country condition information, indicates that the armed conflict between the government and the Taliban and other insurgent groups was ongoing when the Applicant began residing in the United States in diplomatic status. Recent reports establish that the elected government is still in place, with presidential and provincial elections taking place in 2014, but that the Taliban and other insurgent groups continue to carry out armed attacks and politically-motivated killings and to target government employees.

We acknowledge that the Taliban and other insurgent groups in Afghanistan continue to kill civilians and security force personnel, target government employees, and carry out armed attacks. However, as discussed above, the legislative history of Section 13 shows that Congress intended that "compelling reasons" relate to political changes that render diplomats and foreign representatives "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which accredited them. The armed conflict was ongoing when the Applicant came to the United States in 2010 and continued while he resided here, and the elected government has remained in power despite significant challenges to its ability to govern resulting from the insurgency. The Applicant has not established that he is unable to return to Afghanistan due to political changes or upheavals that would render him "stateless or homeless" or at risk of harm and thus constitute compelling reasons as contemplated by Section 13 of the Act.

As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Afghanistan, the question of whether adjustment of status would be in the national interest need not be addressed.

Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of A-Q-N-*, ID# 12785 (AAO Nov. 4, 2015)