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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-B-H-

DATE: JULY 25, 2016

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 Bangladesh, seeks to adjust status to that of a lawful permanent resident (LPR) under Section 13 of the 1957 Immigration Act. *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 (Section 13). Section 13 allows an applicant previously in diplomatic status (A-1, A-2 or G-1, G-2 visa holders) to adjust status if a) the duties were diplomatic or semi-diplomatic, b) the applicant is unable to return to the home country due to compelling reasons, c) the applicant is admissible and a person of good moral character, and d) adjustment is in the national interest and not contrary to the national welfare, safety, or security of the United States.

The Director, National Benefits Center, denied the application. The Director concluded that the Applicant is ineligible for benefits under Section 13 because she is a derivative applicant, and the application of the principal applicant, her father, was denied.

The matter is now before us on appeal. The Applicant references her father's case on appeal. On appeal, the Applicant's father states that the Director erred by concluding that he had not established compelling reasons for being unable to return to Bangladesh. The Applicant's father, in a signed brief, states that he was unable to return to Bangladesh in 2004, when he was prematurely released from his duties at the [redacted] in [redacted] after exercising his right to free speech, because he feared for his life and he still fears for his life. The Applicant's father also states that separation from his children, who were born in the United States, would cause him extreme hardship, which also should be considered a compelling reason that he is unable to return to Bangladesh. Aside from a brief and a personal statement, the Applicant's father did not submit any other documentation on appeal. The Applicant does not claim to have an independent basis for obtaining benefits under section 13.

Upon *de novo* review, we will deny the appeal, as the Applicant has not established that her father performed diplomatic or semi-diplomatic duties or that compelling reasons, as intended under Section 13, make her unable to return to Bangladesh.

I. LAW

The Applicant seeks to adjust to LPR status under Section 13 of the 1957 Immigration Act. 18 U.S.C. § 1255b. Section 13 provides that a foreign national admitted to the United States as an A-1, A-2, G-1, or G-2 nonimmigrant, who has failed to maintain a status under any of those provisions, may apply for LPR status. 18 U.S.C. § 1255b(a). An applicant must show compelling reasons why he or she is unable to return to the country represented by the government which accredited the applicant (or a member of the applicant's immediate family) and that adjustment of status would be in the national interest. 18 U.S.C. § 1255b(b). Further they must demonstrate that their adjustment would not be contrary to the national welfare, safety, or security of the United States, that they are a person of good moral character, and are admissible to the United States. *Id.* The statute limits the benefit to 50 persons each fiscal year. 18 U.S.C. § 1255b(d).

The regulations provide that the benefit is limited to those foreign nationals who performed diplomatic or semi-diplomatic duties and to their immediate families, and that a foreign national whose duties were of a custodial, clerical, or menial nature, and members of their immediate families, are not eligible for benefits under Section 13. 8 C.F.R. § 245.3.

II. ANALYSIS

The Applicant was admitted to the United States in A-1 status as a dependent of her father, who served as for the in and is no longer in that status,[1] and states that she qualifies for LPR status under Section 13 as a dependent of her father. The Applicant's father claims that he and his family are eligible for adjustment of status under section 13 due to the nature of his employment and because of his fears for his life, and the life of his family, as a result of his public expression of his political views, should the family return to Bangladesh.

A. Diplomatic or Semi-Diplomatic Duties

Whether an individual's duties qualify under Section 13 as diplomatic or semi-diplomatic requires a fact-specific, case-by-case analysis. The record indicates that the Applicant's father served as for the in from April 2002 until December 2004. The record also indicates for the last few days of the Applicant's father's service in 2004, he served as acting

[1] Section 13 provides that an individual must no longer hold A-1, A-2, G-1, or G-2 status when they apply for benefits under that provision. 18 U.S.C. § 1255b(a). The provision does not provide benefits to current diplomats or their families. The Applicant's father states that he and his family members were in valid A-1 status when they submitted their Form I-485, Application to Register Permanent Resident or Adjust Status, in early 2005, citing the expiration date on his A-1 visa, March 3, 2005. The validity dates of a visa do not determine status, however, and the record indicates that the Applicant's A-1 status was terminated at the end of December 2004, before she submitted his Form I-485. Thus, the record indicates that the Applicant, as required by Section 13, failed to maintain her status when she applied for benefits under Section 13.

In addition to being admitted to the United States under section 101, paragraphs (a)(15)(A)(i), (a)(15)(A)(ii), (a)(15)(G)(i), or (a)(15)(G)(ii) of the Act (A-1, A-2, G-1, or G-2 visa status), a foreign national must also have performed diplomatic or semi-diplomatic duties in order for them and their immediate family members to be eligible for benefits under Section 13. 8 C.F.R. §245.3. 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 specifies 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 it defines the word "diplomacy" 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.*

Diplomacy, Black's Law Dictionary (10th ed. 2014).

The term "semi-diplomatic" is undefined by any relevant source, but a common definition of the prefix "semi" is "partly: not completely." *Semi*, Merriam-Webster, http://www.merriam-webster.com/dictionary/semi (last visited July 6, 2016). Semi-diplomatic duties therefore could include duties partially or to some extent diplomatic in a more substantial fashion than duties that were of "a custodial, clerical, or menial nature." We must evaluate the position held and the duties performed to determine whether the Applicant is eligible under Section 13.

The Applicant's father stated before U.S. Citizenship and Immigration Services (USCIS) in a sworn statement that his duties as [redacted] involved issuing passports and visas, community work, and correspondence with government officials in the United States and in Bangladesh. When asked if his duties involved negotiations between nations, he answered affirmatively. The only other documentation in the record concerning the Applicant's father's duties consists of graduate-program recommendation letters describing his educational pursuits, which also include general statements about the Applicant's father's work promoting [redacted] matters. As stated above, the record also indicates that the Applicant's father served as [redacted] for 9 days in December 2004, as confirmed by a letter from the [redacted] of the [redacted] in [redacted] but there is no description of his official duties during that period.

Based on the limited information provided, we cannot conclude that the Applicant's father performed diplomatic or semi-diplomatic duties during his service in the United States at the [redacted] functions are not generally "diplomatic" functions, but the performance of consular functions and the establishment that one has performed diplomatic duties are not mutually exclusive. *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. duties performed for the country of accreditation are not "diplomatic" or "semi-diplomatic" duties, because they concern the country of accreditation and not diplomacy between governments. may be considered "diplomatic" or "semi-diplomatic" duties, but the Applicant's father's statements that he performed such duties must be supported by the record. Although the Applicant's father's assertions concerning his involvement in between nations are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence that provides a description and examples of the type of that the Applicant's father engaged in. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In light of the fact that the nature of the Applicant's father's actions that involved "diplomatic" or "semi-diplomatic" duties remains vague, we do not find that the Applicant has met his burden of proof on this threshold issue.

B. Compelling Reasons Unable to Return

Even were the Applicant to establish that her father's duties at the in were of a diplomatic or semi-diplomatic nature, the record does not establish that the reasons that her father provides for being unable to return to Bangladesh are compelling, as intended under Section 13.

To correctly interpret the meaning of the words in the context of this limited benefit, the term "compelling" must be read in conjunction with the phrase "unable to return." A former diplomat, and immediate family, may be unwilling to return to his or her country for many reasons, including medical, educational, or country conditions in their country of accreditation. The legislative history, however, shows that Congress originally intended the benefit for those unable to return to the country of accreditation because "Communist and other uprisings, aggression, or invasion had in some cases destroyed their governments . . . [leaving them] homeless and stateless." *Analysis of Bill to Amend the Immigration and Nationality Act,* 85th Cong., 103 Cong. Rec. 14660 (1957) (statement of Senator John F. Kennedy). 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 (1981). As a result, we interpret this requirement narrowly.

On appeal, the Applicant's father states that at the end of 2004, he feared that he would be attacked or killed if he returned to Bangladesh after exercising his right to free speech in the United States, and he and his family, which includes the Applicant, still face harm there now. The Applicant's father also states that leaving his three U.S. citizen children in the United States would cause him extreme hardship, which should also be considered a compelling reason he is unable to return to Bangladesh. The Applicant is not a U.S. citizen, but she has three siblings who were born in the United States.

In regard to his fear for his life, and the life of his family, in Bangladesh, the Applicant's father explains in detail how he believes that he was asked to step down from his position as and acting due to his refusal to express an opinion in favor of the government in Bangladesh.[2] The Applicant's father states that instead of doing as asked, he protested and expressed views that upset the government, which led to an order that he return to the of Bangladesh, within 7 days. Further, the Applicant's father states that he received a phone call on December 29, 2004, from the of the ministry of foreign affairs, who said that the Applicant's father would "see the consequences of [his] remarks." The Applicant's father states that as a result he feared for his life should he return to and he did not return. In support of those statements, the Applicant's father submitted a transcript of his interview with a Bangladesh journalist in early 2005, concerning his views contrary to the government of Bangladesh. He provided an audio tape of that interview and a translation from Bangla to English. The record also contains a translation of an order, the translation containing the date December 26, 2004,[3] stating that the Applicant's father was transferred to headquarters in and was to relinquish his current charge and return to within 7 days "in the interest of the public." Another order, dated August 2006, accuses the Applicant's father of unauthorized absence from his place of work and states that he was issued a "show cause notice" in July 2005, a second notice in January 2006, and because he did not reply he was dismissed from government service. The Applicant's father also provided numerous newspaper articles from Bangladesh, with English translations, reporting his release from the for "speaking the truth." In one of the articles, the Applicant's father is quoted as saying that he will be the victim of "many kinds of administrative harassments if he returned to the country." He further stated in one 2005 article that he was undecided about returning to Bangladesh and about seeking political asylum in the United States. The Applicant's father also submitted articles concerning the deaths of individuals in Bangladesh who had been noted as having exercised their freedom of speech contrary to the views of those in power, including articles reporting such incidents through 2013.

We recognize the Applicant's father fear of returning to Bangladesh as a result of his having spoken out against the former government. We also recognize the Applicant's father's concern about violence in Bangladesh and we do not question the legitimacy of these concerns. We do not find, however, that the Applicant's father's reasons for not returning to Bangladesh are compelling reasons under Section 13 because any threat, administrative or physical, to the Applicant or her father because of her father's political views or expression of those views is not related to significant changes that occurred in Bangladesh during her father's service. Section 13 is not intended to protect individuals and their immediate families against ongoing country conditions or political

[2] When the Applicant's father initially submitted his Form I-485 in January 2005, he stated that he did not want to return to Bangladesh for professional and educational reasons and that he had resigned his position with the because of "a number of constraints," including "very low salary." The Applicant's father did not raise the present issues until his motion to reopen the 2013 decision denying his application. The Director reopened his application based on the Applicant's father's statements on motion, but he denied the application again in 2016, citing a lack of compelling reasons. The Applicant's father does not explain the delay in stating the circumstances of his resignation in 2004, but he provides documentation supporting the political reasons for his resignation.

[3] The original document, which appears to be in Bangla, contains the date 2008.

issues that existed prior to their service. For the same reasons, we do not find that hardship as a result from separation from family members who are U.S. citizens is the type of circumstance considered compelling under Section 13. The legislative history of Section 13 makes clear that the benefit applies to individuals who cannot return to their country of accreditation because of changes that occurred in their country of accreditation during their diplomatic service, and more specifically changes in the government brought on by "uprisings, aggression, or invasions" that leave individuals "homeless and stateless." 103 Cong. Rec. 14660.

C. Additional Requirements under Section 13

The Applicant must also establish that there are compelling reasons that her adjustment to LPR status under this provision is in the national interest of the United States. The Applicant's father submitted documentation of his educational background, and certificates of achievement for the Applicant and her siblings. We have no reason to question the Applicant's education or ability to contribute to society. As the Applicant has not established that her father performed diplomatic or semi-diplomatic duties or that compelling reasons as provided under Section 13 make her unable to return to Bangladesh, however, we need not address the issue of whether she has established that her adjustment is in the national interest. Moreover, as the Applicant has not demonstrated eligibility under Section 13, we need not consider whether she warrants adjustment to LPR status in the exercise of discretion.

III. CONCLUSION

The Applicant has the burden of proving eligibility for adjustment of status under Section 13. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden because the record does not establish that her father performed diplomatic or semi-diplomatic duties for the in and because the reasons that she provides for being unable to return to Bangladesh are not compelling in accordance with Section 13. The appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of S-B-H-*, ID# 10471(AAO July 25, 2016)