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

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

MATTER OF K-H-A-

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 did not establish compelling reasons, as required under Section 13, that he was unable to return to Bangladesh.

The matter is now before us on appeal. On appeal, the Applicant states that the Director erred by concluding that he had not established compelling reasons for being unable to return to Bangladesh. He states, in a signed brief, that he was unable to return to Bangladesh in 2004, when he was prematurely released from his duties at the [REDACTED] after exercising his right to free speech, because he feared for his life and he still fears for his life. The Applicant 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 does not submit any other documentation on appeal.

Upon *de novo* review, we will deny the appeal, as the Applicant has not established that he performed diplomatic or semi-diplomatic duties or that compelling reasons, as intended under Section 13, make him 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

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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, who was admitted to the United States in A-1 status to work for the [REDACTED] and is no longer in that status,<sup>1</sup> states that he qualifies for LPR status under Section 13 due to the nature of his employment and because he fears for his life as a result of his public expression of his political views, should he 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 served as [REDACTED] for the [REDACTED] from April 2002 until December 2004. The record also indicates for the last few days of the Applicant's service in 2004, the Applicant served as [REDACTED]

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 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

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<sup>1</sup> 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. The Applicant states that he was in valid A-1 status when he submitted his 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 he submitted his Form I-485. Thus, the record indicates that the Applicant, as required by Section 13, failed to maintain his status when he applied for benefits under Section 13.

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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 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 duties consists of graduate-program recommendation letters describing his educational pursuits, which also include general statements about the Applicant’s work promoting trade and investment matters. As stated above, the record also indicates that the Applicant served as [REDACTED] for 9 days in December 2004, as confirmed by a letter from the [REDACTED] of the [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 performed diplomatic or semi-diplomatic duties during his service in the United States at the [REDACTED] [REDACTED] functions are not generally “diplomatic” functions, but the performance of [REDACTED] 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. [REDACTED] 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. Trade promotion and negotiation may be considered “diplomatic” or “semi-diplomatic” duties, but the Applicant’s statements that he performed such duties must be supported by the record. Although the Applicant’s assertions concerning his involvement in trade promotion and negotiation 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 trade

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promotion and negotiation that the Applicant 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 his 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 his duties at the [REDACTED] were of a diplomatic or semi-diplomatic nature, the record does not establish that the reasons that he 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 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 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 still faces harm there now. He 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.

In regard to his fear for his life in Bangladesh, the Applicant explains in detail how he believes that he was asked to step down from his position as [REDACTED] and [REDACTED] due to his refusal to express an opinion in favor of the government in Bangladesh.<sup>2</sup> The Applicant states that

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<sup>2</sup> When the Applicant 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 [REDACTED] because of “a number of constraints,” including “very low salary.” The Applicant did not raise the present issues until his motion to reopen the 2013 decision denying his application. The Director reopened his application based

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instead of doing as asked, he protested and expressed views that upset the government, which led to an order that he return to [REDACTED] Bangladesh, within 7 days. Further, the Applicant states that he received a phone call on December 29, 2004, from the personnel director of the ministry of foreign affairs, who said that the Applicant would “see the consequences of [his] remarks.” The Applicant states that as a result he feared for his life should he return to [REDACTED] and he did not return. In support of those statements, the Applicant 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,<sup>3</sup> stating that the Applicant was transferred to headquarters in [REDACTED] and was to relinquish his current charge and return to [REDACTED] within 7 days “in the interest of the public.” Another order, dated August 2006, accuses the Applicant 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 also provided numerous newspaper articles from Bangladesh, with English translations, reporting his release from the [REDACTED] for “speaking the truth.” In one of the articles, the Applicant 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 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 fear of returning to Bangladesh as a result of having spoken out against the former government. We also recognize the Applicant’s concern about violence in Bangladesh and we do not question the legitimacy of his concerns. We do not find, however, that the Applicant’s reasons for not returning to Bangladesh are compelling reasons under Section 13 because any threat, administrative or physical, to the Applicant because of his political views or expression of those views is not related to significant changes that occurred in Bangladesh during his service. Section 13 is not intended to protect individuals against ongoing country conditions or political issues that existed prior to the Applicant’s 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.

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on the Applicant’s statements on motion, but he denied the application again in 2016, citing a lack of compelling reasons. The Applicant 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.

<sup>3</sup> The original document, which appears to be in Bangla, contains the date 2008.

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### C. Additional Requirements under Section 13

The Applicant must also establish that there are compelling reasons that his adjustment to LPR status under this provision is in the national interest of the United States. The Applicant submitted documentation of his educational background, and certificates of achievement for his children. We have no reason to question the Applicant or his family's education or ability to contribute to society. As the Applicant has not established that he performed diplomatic or semi-diplomatic duties or that compelling reasons as provided under Section 13 make him unable to return to Bangladesh, however, we need not address the issue of whether he has established that his adjustment is in the national interest. Moreover, as the Applicant has not demonstrated eligibility under Section 13, we need not consider whether he 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 he performed diplomatic or semi-diplomatic duties for the [REDACTED] and because the reasons that he 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 K-H-A-*, ID# 10467 (AAO July 25, 2016)