



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

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

MATTER OF F-S-

DATE: JUNE 1, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Pakistan, 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, a derivative of her spouse, could not derive benefits under Section 13 where her spouse did not establish eligibility under Section 13. The Applicant filed a Form I-290B, Notice of Appeal or Motion, appealing the decision, and we rejected that appeal, finding that it was not timely filed. The Applicant then filed a motion to reopen and reconsider our decision. We denied that motion on the grounds that the Applicant's spouse, the principal Applicant, did not establish eligibility under Section 13 and the Applicant had not presented any new facts or law that demonstrated that our decision was incorrect. The Applicant filed a subsequent Form I-290B marked as an appeal that we took as a motion to reopen and reconsider, which we denied for the same reasons as the previous motion.

The matter is now before us on a third motion. The Applicant seeks reopening, submitting a letter from herself stating that the lives of her family members in Pakistan have been threatened and that she has been advised to remain in the United States. She requests special humanitarian consideration of her case and adjustment to LPR status under any provision available.

We will deny the motion.

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 was admitted to the United States in G-1 status as a derivative of her spouse, who was to serve as an information assistant for the [REDACTED] to the [REDACTED] and her status was terminated at the completion of her spouse's term. The Applicant, who on motion states that there are threats against the life of her family members in Pakistan and that she has been advised to remain in the United States, does not establish new facts on motion that warrant changing our previous decisions. In our last decision, we referenced the denial of the Applicant's spouse's motion, as the Applicant had based her previous motion on the claims her spouse had made. The Applicant's spouse stated that he feared that his life was threatened in Pakistan by Taliban terrorists as a result of his affiliation with the [REDACTED]. We found that the Applicant's spouse did not present evidence of recent threats against his life, and that even if he had, those threats did not constitute compelling reasons under Section 13. Section 13 is not intended to protect individuals from ongoing country conditions that existed before their service in the country that accredited them, even where the threats began after the diplomatic service, and the Taliban had operated in Pakistan prior to the Applicant's spouse's diplomatic service. The Applicant has not presented new evidence on motion that establishes that the conditions in Pakistan, as they relate to the Applicant, have changed in a way that would satisfy the criteria to establish compelling reasons 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 term *unable*. A former diplomat may be unwilling to return to his or her country for many reasons, including medical, educational, and professional reasons, or general country conditions. The legislative history 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 motion, the Applicant states that she understands that her case cannot be approved under Section 13, even though she believes that her family members’ lives are threatened in Pakistan. She requests that special consideration be given to her case under humanitarian grounds or any other basis under immigration law, adding that she has five children who are receiving an education in the United States and have been granted temporary status here through the Deferred Action for Childhood Arrivals program.

Although the Applicant provides serious reasons for not wanting to return to Pakistan, the reasons are not compelling reasons within the meaning of Section 13. Section 13 is not intended to protect individuals from ongoing country conditions that existed prior to their service, even where the threats against the Applicant’s spouse reportedly began after his service. The documentation submitted on motion does not establish new facts that affect our decision or establish that the Director’s decision was based on an incorrect application of law or policy. We find that the record does not establish the Applicant’s eligibility for adjustment of status under Section 13, as the Applicant has not demonstrated compelling reasons for her inability to return to her country of accreditation as required under Section 13. Furthermore, there is no basis under Section 13 to approve the Applicant’s case on humanitarian grounds alone.

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. As the Applicant has not established compelling reasons as provided under Section 13, 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 the Applicant merits adjustment to LPR status in the exercise of discretion.

The Applicant also requests on motion that her application for LPR status be approved “under any available immigration law.” The Applicant’s appeal and subsequent motions are related to her application for LPR status under Section 13, and our jurisdiction in her case is limited to that application. The record indicates that the Applicant has filed a Form I-485, Application to Register Permanent Residence or Adjust Status, based on her spouse’s approved Form I-140, Immigrant Petition for Alien Worker. That Form I-485 has not been adjudicated and we will forward the Applicant’s file to the appropriate office for consideration of that application.

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 reasons that she provides for being unable to return to Pakistan are not compelling in accordance with Section 13. The motion will be denied.

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ORDER: The motion to reopen is denied.

Cite as *Matter of F-S-*, ID# 17746 (AAO June 1, 2016)