



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

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

MATTER OF Z-A-

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 did not establish compelling reasons he was unable to return to Pakistan as required under Section 13. The Applicant filed a Form I-290B, Notice of Appeal or Motion, appealing the decision, and we dismissed the appeal, finding that the Applicant did not establish compelling reasons within the meaning of Section 13. The Applicant then filed a motion to reopen and reconsider our dismissal, which we denied for the same reason. The Applicant filed a subsequent Form I-290B marked as an appeal, which we took as a second motion to reopen and reconsider, but we denied it again, finding the compelling reasons stated by the Applicant were not compelling within the meaning of Section 13.

The matter is now before us on a third motion. The Applicant seeks reopening and provides a letter from himself reiterating the same basis for establishing compelling reasons as he did on his previous motion – threats from Taliban terrorists. The Applicant also requests special humanitarian consideration, asylum, or adjustment of status to lawful permanent resident 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

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). They also must demonstrate that their adjustment would not be contrary to the national welfare, safety, or security of the United States, they are a person of good moral character, and they 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 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 on motion states that a Taliban terrorist in 2013 made a specific threat against his life, does not establish new facts on motion that warrant changing our previous decision to dismiss the appeal of his application for LPR status under Section 13. In our last decision, we found that even if the Applicant had established that he and his family are the targets of specific threats from the Taliban, he still would not have established compelling circumstances as intended under Section 13. Section 13 is not intended to protect individuals from ongoing country conditions that existed prior to their diplomatic service, even where threats against the Applicant reportedly began after his service. The record does not establish that the conditions in Pakistan, as they relate to the Applicant as a former diplomat, have changed in a way that would satisfy the criteria to establish compelling reasons under Section 13.

As stated in our prior decisions, 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 acknowledges he understands the basis of our dismissal of his previous motion, namely that there is violence and a lack of security in Pakistan caused by political instability and terrorist and other extremist groups operating in the country, but those circumstances existed

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before the Applicant's service and have not changed significantly so as to render him "homeless and stateless" as a result of his diplomatic service. In our previous decision, we stated that the Applicant had not provided evidence of recent threats against his life in Pakistan but that even if he had, the claimed threats did not relate to political changes in Pakistan during his diplomatic service and as a result were not the type of compelling reasons that establish eligibility under Section 13. The Applicant now states, however, that after a recent inquiry, local [REDACTED] leadership informed him that a Taliban terrorist arrested in Pakistan in 2013 included him on a list of targets of the terrorist group. The Applicant states that attacks against [REDACTED] leaders accelerated after the assassination of [REDACTED] in 2007 and when the [REDACTED] came into power in 2008. He states that his name was put on a target list, like "all those persons who they believe are the loyal [REDACTED] workers." The Applicant provides serious reasons that he feels "highly insecure" returning to Pakistan as a result of claimed threats against his life, and he requests that special consideration be given to his application under humanitarian grounds.

As stated in our prior decision, however, the Taliban and other militant groups were operating in Pakistan before the beginning of the Applicant's diplomatic service in the United States in 2003. The scope of our jurisdiction over the Applicant's case is his application for LPR status under Section 13. There is no basis under Section 13 to approve the Applicant's case on humanitarian grounds alone. Section 13 is not intended to protect individuals from ongoing country conditions that existed before their service to the country that accredited them, even where the threats against the Applicant 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 his inability to return to his country of accreditation as required 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. As the Applicant has not established compelling reasons as provided under Section 13, 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 the Applicant warrants adjustment to LPR status in the exercise of discretion.

The Applicant also requests on motion that he and his family members be granted political asylum or that his case "be considered under any other clause of the Immigration Law [sic] which can accommodate his appeal." The Applicant's appeal and subsequent motions relate to his application for LPR status under Section 13, and our jurisdiction in his case is limited to that application. The record does not show that the Applicant has filed a Form I-589, Application for Asylum and for Withholding of Removal. Even if he had, we would not have jurisdiction over that application or subsequent appeals of that application. The record shows, however, that the Applicant has filed a Form I-485, based on an approved Form I-140, Immigrant Petition for Alien Worker. That Form I-

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485 has not been decided, 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 he provides for being unable to return to Pakistan are not compelling in accordance with Section 13. The motion will be denied.

ORDER: The motion to reopen is denied.

Cite as *Matter of Z-A-*, ID# 17747 (AAO June 1, 2016)