U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-B-

DATE: JUNE 6, 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 Moldova, 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 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 his spouse who is the principal applicant, could not establish compelling reasons as required under Section 13, where the principal applicant did not establish eligibility under Section 13. The Applicant filed a Form I-290B, Notice of Appeal or Motion, appealing the decision, and we summarily dismissed that appeal, as the Applicant did not specifically identify any erroneous conclusion of law or statement of fact, nor did he submit a brief or additional evidence, as indicated on the Form I-290B

The matter is now before us on a motion to reopen and reconsider.[1] In the motion, the Applicant submits additional evidence and states that his spouse has more than compelling reasons that she is unable to return to Moldova with her family.

We will deny the motion.

[1] A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

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 derivative of his spouse, who was to serve as the first secretary at the [redacted] in [redacted] and his status was terminated upon the completion of his spouse's term. The issue on motion is whether the Applicant established that he has compelling reasons, as set forth in Section 13, for being unable to return to his native Moldova. On motion, the Applicant describes the trouble that his spouse's family has faced in Moldova since her childhood and through the present as a result of her father's Afghani nationality. He also describes how governmental corruption and prejudice against his father-in-law's nationality lead him to believe that he will face undue hardship if he were to return to Moldova. Although the Applicant provides serious reasons for not wanting to return to Moldova, we do not find that the reasons he provides are compelling reasons relating to political changes that rendered him "stateless or homeless" following political upheaval in his home country, as explained below.

The term *compelling* must be read in conjunction with the phrase *unable to return*, to correctly interpret the meaning of these words in the context of this limited benefit. 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.

The Applicant states that it would be dangerous for him to return to Moldova because of past discrimination and persecution against his spouse and her family and ongoing corruption in Moldova. The new documentation that the Applicant submits on motion consists of online news articles and reports concerning country conditions in Moldova, highlighting corruption and human trafficking problems, and a statement from his spouse. The Applicant states that the corruption in Moldova has affected him in particular because of his father-in-law's Afghani nationality. The Applicant's spouse, in her sworn statement submitted with her application, described how she believes she was discriminated against as a result of her father's nationality, including during her pregnancy during her diplomatic service. In the sworn statement, the Applicant's spouse also stated that her father has been repeatedly harassed in Moldova, including being arrested, and that she has been the subject of ridicule when she listed her father's nationality. The Applicant does not submit documentary evidence in support of these claims, other than his spouse's personal statement.

Although the Applicant's fear of returning to Moldova may be legitimate and his stated reasons serious, his reasons are not the type of compelling reasons contemplated by Congress when they established Section 13, because they do not relate to political changes that occurred during his spouse's performance of her semi-diplomatic duties in the United States on behalf of Moldova. Adjustment of status under Section 13 is a limited benefit for not more than 50 persons a year granted in the special circumstances contemplated by Congress. Section 13 is not intended to protect individuals from ongoing threats and discrimination that occurred prior to their service to the country that accredited them, even where that discrimination reportedly continued during and after their service.

The documentation submitted on motion does not establish new facts 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 of the Act for his inability to return to Moldova, 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 of the Act, 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 of the Act. *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 Moldova are not compelling in accordance with Section 13 of the Act. The motion will be denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of T-B-*, ID# 17376 (AAO June 6, 2016)