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

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

MATTER OF M-H-

DATE: JUNE 22, 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 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 that he was unable to return to Pakistan as required under Section 13.

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 Pakistan. He also states, in a signed brief, that he qualifies for adjustment of status due to the nature of his work for the [REDACTED] in [REDACTED] and because he is a Shia and fears returning to Pakistan due to the political climate there. 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.

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

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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-2 status to work for the [REDACTED] and is no longer in that status, states that he qualifies for LPR status under Section 13 due to the nature of his employment and because of his fear of returning to Pakistan as a Shia Muslim, given the sectarian violence and current political climate there. The Applicant does not provide documentation in support of his eligibility, aside from his own statements and a letter concerning his reassignment from [REDACTED] to [REDACTED]. Section 13 is an extremely limited benefit for individuals who performed diplomatic or semi-diplomatic duties and who are unable to return to their country of accreditation due to compelling reasons relating to political changes that rendered them “stateless or homeless” following political upheaval in his home country. The Applicant has not met his burden of proof to show that he meets the criteria of Section 13.

A. Diplomatic or Semi-Diplomatic Duties

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 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).

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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 June 21, 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.

Whether an individual’s duties qualify under the Section 13 as diplomatic or semi-diplomatic requires a fact-specific, case-by-case analysis. The record establishes that the Applicant was admitted to the United States in A-2 status on June 18, 2011, to work with the [REDACTED] in [REDACTED]. Two official documents in the record refer to the Applicant’s title at the [REDACTED]. The first document, from the U.S. Department of State, lists [REDACTED] as his functional title. The second document is an office order issued by the [REDACTED] which states the Applicant’s title as [REDACTED] to the trade minister. The Applicant in a sworn statement described himself as a [REDACTED] whose position dealt with expanding trade ties between the business communities in the United States and Pakistan. He stated that he “arranged engagements and meetings and also supported [his] boss.” He provides no independent documentation to corroborate his description of the nature of his duties. 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]. Although the Applicant’s assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *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).

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 conditions in Pakistan, as they relate to the Applicant, have changed in a way that would establish compelling reasons he is unable to return to Pakistan 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

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“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 he fears returning to Pakistan because he is a Shia and fears religious retribution, given the political climate there. In support of that statement, he cites to a section of the 2014 U.S. Department of State Country Report on Human Rights Practices for Pakistan stating that sectarian violence and a lack of rule of law are among the most serious human rights problems in Pakistan. The report also cites violence, abuse, and social and religious intolerance by militant organizations and other nongovernmental actors, particularly in a few named provinces of Pakistan. Section 13, however, is not intended to protect individuals against ongoing country conditions that existed prior to the Applicant’s service. Although the Applicant mentioned in his sworn statement that he believes that the recent change in government in Pakistan would affect him, he does not provide additional details or evidence to show why he in particular would likely be a target of violence as a result of his service in the United States on behalf of the Pakistani government and changes that occurred in Pakistan during his service. We recognize the Applicant’s concern regarding violence in Pakistan, in particular because he is a Shia Muslim, and we do not question the legitimacy of this concern; however, we do not find that this is the type of situation recognized as compelling reasons under Section 13, in particular because any threat to the Applicant because of his religion does not appear to be related to his service in the United States on behalf of Pakistan or to significant changes that occurred in Pakistan during his service. The Applicant has not shown that his having been recalled to ██████████ in 2014 means that his life is threatened or that he is unable to return there. The Applicant also stated in sworn testimony that he believes that his children can obtain a better education in the United States.

We do not find that the circumstances in Pakistan as they relate to the Applicant changed significantly so as to render him “homeless and stateless” as a result of his diplomatic service. The ongoing sectarian violence and political situation in Pakistan, even where it has worsened, is not the type of reason considered compelling under Section 13. In addition, the desire to obtain a better education for one’s children is also not the type of circumstance considered compelling under Section 13.

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. 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 Pakistan, 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.

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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] in [REDACTED] and because the reasons that he provides for being unable to return to Pakistan are not compelling in accordance with Section 13. The appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of M-H-*, ID# 18068 (AAO June 22, 2016)