U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-S-M-D-

DATE: JUNE 29, 2018

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 [redacted] seeks to adjust status to that of a lawful permanent resident (LPR) under section 13 of the 1957 Immigration Act (Section 13). 8 U.S.C. § 1255b.[1] 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 of the National Benefits Center denied the application, concluding that the Applicant, a derivative of his spouse, was not eligible to adjust status under Section 13 because his spouse's application was denied.

On appeal, the Applicant asserts that his spouse's position entailed diplomatic duties, and contends that he cannot return to [redacted] because he and his spouse will be at risk of harm due to their connections to an opposition political party.

Upon *de novo* review, we will dismiss the appeal.[2]

I. LAW

Section 13 provides that a foreign national, along with immediate family members, who was admitted to the United States as an A-1, A-2, G-1, or G-2 nonimmigrant, and who has failed to maintain that status, may apply for adjustment of status. 8 U.S.C. § 1255b(a), 8 C.F.R. § 245.3. An applicant must show compelling reasons why the applicant is unable to return to the country represented by the government which accredited the applicant, and that adjustment of status would be in the national interest. 8 U.S.C. § 1255b(b). An applicant must further demonstrate that adjustment of status would not be contrary to the national welfare, safety, or security of the United

[1] Pub. L. No. 85-316, 71 Stat. 642, *amended by* Pub. L. No. 97-116, 95 Stat. 161 (1981).

[2] We note that on January 19, 2018, the Applicant filed a second Form I-485, Application to Register Permanent Residence or Adjust Status, based on Section 13, which is currently pending.

States, and that the applicant is a person of good moral character and admissible to the United States. *Id.* The statute limits the benefit to 50 persons each fiscal year. 8 U.S.C. § 1255b(d).

The regulations provide that adjustment of status under Section 13 is limited to those foreign nationals who performed diplomatic or semi-diplomatic duties, and that a foreign national whose duties were of a custodial, clerical, or menial nature, are not eligible for adjustment. 8 C.F.R. § 245.3. The regulations also state that an applicant who is prima facie eligible for adjustment to LPR status under another provision of law shall be advised to apply for adjustment pursuant to such other provision of law. *Id.*

II. ANALYSIS

The issue presented on appeal is whether the Applicant's spouse performed diplomatic or semi-diplomatic duties as part of his employment in the United States and whether there are compelling reasons why the Applicant is unable to return to The Director found that the Applicant was ineligible for adjustment of status under Section 13 because his spouse's application was denied. On appeal, the Applicant submits additional evidence and a brief, contending that his spouse performed diplomatic duties in the United States and asserts that they will be in danger in due to their connections to an opposition political party. We find that the Applicant's spouse has not established that she performed diplomatic or semi-diplomatic duties, and the Applicant has not demonstrated compelling reasons under Section 13 that prevent his return to

A. Diplomatic or Semi-Diplomatic Status

To be eligible for adjustment of status under Section 13, an applicant admitted to the United States in A-1, A-2, G-1, or G-2 visa status must have performed diplomatic or semi-diplomatic duties. 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 specifically indicates 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 refers to the word *diplomacy*, which it defines 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.*

(10th ed. 2014). Consular functions are generally not diplomatic functions, but the performance of consular functions and the establishment that one has performed diplomatic duties are not mutually exclusive.[3]

[3] *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.

The term semi-diplomatic is undefined by any source. Common definitions of the term *semi* include: "to some extent," "partly," "partial," and "having some of the characteristics of."[4] Semi-diplomatic duties therefore could include duties partially or to some extent diplomatic in a more substantial fashion than duties that are of "a custodial, clerical, or menial nature." We must evaluate the position held and the duties performed to determine whether the Applicant is eligible for adjustment of status under Section 13.

The record reflects that the Applicant's spouse was employed as an "Information Assistant" at the in Washington, D.C. According to the Applicant's spouse's sworn statement, her duties included: preparing statements and statistical information; writing summaries; and arranging meetings and appointments. On appeal, the Applicant's spouse provides a letter from the indicating that the spouse also handled inquiries on trade between the United States and updated the Embassy website on content related to trade, and interacted with the U.S. government on trade issues. The Applicant's spouse does not claim to have ever been directly involved in diplomatic negotiations between and the United States. Based on the Applicant's spouse's description of her work duties and the letter from the her employment in the United States primarily involved duties of a clerical nature, providing administrative support to the office. None of the duties as described in the record involved engaging in negotiations between national governments or on foreign policy issues or other functions of a diplomat, but instead reflect clerical and administrative duties. Routine duties that an individual performs for the country of accreditation are not diplomatic or semi-diplomatic duties, as contemplated under Section 13, because they concern the country of accreditation only and not diplomacy between governments.

Accordingly, the record does not establish that the Applicant's spouse performed diplomatic or semi-diplomatic duties as required for eligibility under Section 13. We would normally end our review after determining that an applicant had not satisfied the threshold requirement of showing that he or she performed diplomatic or semi-diplomatic duties; however, because the Director addressed the issue of compelling reasons, we will also address that issue below.

B. Compelling Reasons for Inability to Return

The term *compelling* must be read in conjunction with the phrase *unable to return* and the purposes of Section 13 to correctly interpret the meaning of the words in the context of this limited benefit. There may be many reasons for why a former diplomat is unwilling to return to his or her country, 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."[5] The phrase

[4] Merriam-Webster, *Semi, (Apr. 2018), http://www.merriam-webster.com/dictionary/semi.*

[5] *Analysis of Bill to Amend the Immigration and Nationality Act,* 85th Cong., 103 Cong. Rec. 14660 (1957) (statement of Senator John F. Kennedy).

"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). We therefore interpret this requirement narrowly consistent with the congressional intent. Reasons that may be considered *compelling* are those resulting from a fundamental political change that because of the prior diplomatic service constrains the applicant's return to the home country.

The Applicant's spouse asserts in her sworn statement that they are unable to return to because they have three U.S. citizen daughters and wish to provide a better life for them in the United States. She contends that they would suffer undue hardship if the family was to return to On appeal, the Applicant's spouse also asserts that she and the Applicant would be in danger in because they are actively supporting an opposition political party, which is led by a claimed relative, [6] As evidence of this assertion, the Applicant's spouse submits a police report indicating that the Applicant received a threat in 2015 related to his support of their relative and a letter from the spouse's relative attesting to the Applicant's support for his political party. She also submits a news article recounting death threats made to her relative in 2015, and a news article indicating that her relative was arrested in 2018. Additionally, she provides a letter from her mother, indicating that she and the Applicant donated to their relative's 2015 political campaign.

As we noted previously, desiring to remain in the United States due to the general country conditions in an applicant's home country, or increased educational or economic opportunity in the United States, such as for the Applicant's children, are not considered compelling reasons for adjustment of status under Section 13. In order to demonstrate a compelling reason under Section 13, the Applicant must show that he is unable to return to because of his spouse's employment at the in the United States. There is no indication in the record, however, of any threat made to the Applicant or his spouse since 2015, nor is there any indication that either of them has received threats related to her employment at the in the United States. The Applicant and his spouse have also not provided any evidence that supporters of their political party are being specifically targeted by the current government due to their political activities. Contrary to the Applicant's assertions, the news article recounting the arrest of their relative indicates that he was arrested, not for his political activity, but for alleged fraud related to a building purchase.

After reviewing the entirely of the record, we find that the Applicant, like his spouse, has not established that there are compelling reasons that prevent his return to And, we additionally find that the record does not support a claim that the Applicant's spouse performed diplomatic or semi-diplomatic duties. Accordingly, we need not address whether the Applicant has established that his adjustment of status under Section 13 is in the national interest or warrants approval as a matter of discretion, and his application will remain denied.

[6] The documentation submitted by the Applicant's spouse includes a letter from indicating that the Applicant's spouse is his "cousin sister."

ORDER: The appeal is dismissed.

Cite as *Matter of P-S-M-D-*, ID# 1597370 (AAO June 29, 2018)