



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

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

In Re: 20354528

Date: MAR. 15, 2022

Appeal of National Benefits Center Decision

Form I-485, Application to Adjust Status

The Applicant, a native and citizen of [REDACTED] seeks to become a lawful permanent resident (LPR) under section 13 of the 1957 Immigration Act (Section 13), 8 U.S.C. § 1255b. The Director of the National Benefits Center denied the Form I-485, Application to Adjust Status (adjustment application), concluding that the Applicant did not establish, as required, that there are compelling reasons preventing his return to [REDACTED]. The Applicant filed an appeal of that decision to this office. On appeal, the Applicant submits evidence and a brief asserting he is unable to return to Honduras due to compelling reasons. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 13 is an adjustment of status category for noncitizens who can demonstrate, in part: (1) failure to maintain A-1, A-2, G-1, or G-2 nonimmigrant status as of the application's filing date;¹ (2) performance of diplomatic or semi-diplomatic duties by the principal on behalf of the accrediting country; and (3) inability, because of compelling reasons, to return to the country that accredited the noncitizen. 8 U.S.C. § 1255b; 8 C.F.R. § 245.3.² In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

¹ The A nonimmigrant classification is for diplomats and foreign government officials (principals) as well as their immediate family members. The G nonimmigrant classification is for employees of certain international organizations (principals) and their immediate family members. 8 C.F.R. § 214.2(a), (g).

² If the first three eligibility requirements are met, an applicant must also establish that: compelling reasons demonstrate that the adjustment would be in the national interest and would not be contrary to the national welfare, safety, or security of the United States; and he or she is of good moral character and admissible to the United States. Discussion of these remaining criteria is generally unnecessary in cases where the first three eligibility criteria have not been met.

II. ANALYSIS

The issue on appeal is whether the Applicant has established his inability, because of compelling reasons, to return to [redacted]. The record reflects that the Applicant was admitted to the United States in A-1 nonimmigrant status on September 9, 2010, to work for the [redacted] consulate in [redacted] initially as the commercial attaché and then as the vice consul. The Applicant's wife and child joined him in November 2010 in A-1 nonimmigrant status. The Applicant's A-1 nonimmigrant status was terminated on [redacted] 2014, and on November 10, 2017, he filed the instant adjustment application requesting LPR status under Section 13.

In support of his adjustment application, the Applicant asserted that he and his wife experienced intimidation, threats, and harassment while working at the [redacted] consulate due to reporting corruption, including an incident of financial corruption by M-F-R-³, the [redacted] and later the [redacted] and misappropriation of money by her spouse. The Applicant stated that his wife reported the issues to a reporter, and he was fired in [redacted] 2014, days after a related news report was published.

The Applicant then mentioned that in [redacted] 2014, he and his wife found out M-F-R- had permitted her spouse's unauthorized employment at the [redacted] consulate, where he engaged in inappropriate behavior towards a passport applicant. The Applicant's wife reported these issues to the consular supervisor. The Applicant submitted published articles related to these issues; a disciplinary resolution from the [redacted] Ministry of Foreign Affairs in November 2014 which detailed the Applicant's wife's accusation against M-F-R- and their finding that she committed a misdemeanor and received a warning notice; his statement that his wife reported financial corruption to a [redacted] radio program in April 2014 and that M-F-R-'s father then attempted to intimidate her; and the Applicant's father's statement that M-F-R-'s father told him the Applicant and his wife would be arrested for their actions.

The Applicant also included evidence that his wife's mother was the victim of robbery in [redacted] in May 2015, and her statement that this was an act of retaliation for her daughter's prior actions. The Applicant's wife's mother also mentioned a threat she received in 2017 as a result of her daughter posting messages criticizing the [redacted] government on Facebook. The Applicant further claimed that M-F-R-'s husband personally threatened his wife's mother in July 2018 because of his wife's actions. The Applicant stated that he and his wife were threatened by [redacted] government officials, and they have filed criminal reports with the [redacted] government and the U.S. Department of State (DOS). He further claimed that an ally of [redacted], the [redacted] president elected in January 2014,⁴ threatened and intimidated him due to his previous position at the [redacted] consulate, and he submitted articles related to harm experienced by those protesting the president. Lastly, the Applicant submitted statements from individuals in 2019 indicating M-F-R-'s husband is a dangerous person and seeks revenge on the Applicant and his wife.

The Director referenced the Applicant's claim that his family would be targeted upon return to [redacted] by the [redacted] government due to his wife's accusations of corruption to the Ministry of Foreign Affairs and his opposition to President [redacted]. The Director found that the Applicant did

³ Initials are used throughout this decision to protect the identity of the individual.

⁴ A new president was elected in [redacted] in November 2021, after the Applicant filed his appeal.

not present specific reasons why he or his wife would be targeted by the [] government or would be at a risk of harm because of his past government employment, political activities, or other related reasons. The Director acknowledged the difficulties the Applicant might face upon return to [] but explained that compelling reasons under Section 13 did not include general inconveniences and hardships associated with relocation, the risks or dangers experienced by the population as a whole, or a desire to remain in the United States. Based on the foregoing, the Director concluded that the Applicant did not establish his inability, because of compelling reasons, to return to []

On appeal, the Applicant claims that his termination from the [] consulate was politically motivated by a member of the National Party as retaliation for him and his wife exposing members for corruption and other illegal activities. The Applicant states that a change of regime occurred prior to his termination, as President [] was elected in 2014, and by 2017, he and his wife made it clear they considered his government to be criminal and his re-election in 2017 to be fraudulent. He contends that he and his wife will suffer direct attacks and their lives would be in danger in [] and their daughter, who has autism and several medical issues, would also be negatively affected upon return there.

The Applicant claims that the Director did not address the harassment, intimidation, and threats he received while working at the consulate; the accusation filed by his wife to the Ministry of Foreign Affairs; the complaints for assistance they filed with human rights organizations, U.S. elected officials, and DOS due to fear for their safety; a threat made by an ally of President [] if they did not stop making accusations; the intimidation of his wife's mother's; and a psychological evaluation establishing the fear they are experiencing. Lastly, the Applicant contends that legislative history should not be considered in adjudicating his adjustment application.

The Applicant has submitted additional evidence on appeal including, but not limited to, medical records for his daughter, letters to U.S. politicians, information on political and human rights issues in [] and statements related to safety issues upon return to []. We have reviewed the entire record, as supplemented on appeal, and conclude that the Applicant has not overcome the basis for the denial of his request for adjustment of status under Section 13.

As stated, a Section 13 applicant must show:

Compelling reasons demonstrating both that the alien is *unable to return* to the country represented by the government which accredited the alien or the member of the alien's immediate family and that adjustment of the alien's status to that of an alien lawfully admitted for permanent residence would be in the national interest.

8 U.S.C. § 1255b(b) (emphasis added). Neither the statute nor the regulation at 8 C.F.R. § 245.3 defines the term "compelling reasons" or describes the factors to be considered. There is also no binding precedent that addresses the meaning of "compelling reasons" or that could otherwise provide guidance. See *Jabateh v. Lynch*, 845 F.3d 332, 336 (7th Cir. 2017) (recognizing that the Board of Immigration Appeals does not have jurisdiction over Section 13 denials). Accordingly, it is instructive to look at the legislative history of the classification, as such history can be "helpful to corroborate

and underscore a reasonable interpretation of the statute.” *Matter of Punu*, 22 I&N Dec. 224, 227 (BIA 1998) (citing *Weinberger v. Rossi*, 456 U.S. 25, 32 (1982)).

When originally introduced in Congress in 1957, the purpose of Section 13 was to accord LPR status to “[t]hose high ranking Government officials and their immediate families who have come here as diplomatic representatives, or representatives of their countries to the United Nations [and who], [b]ecause of Communist and other uprisings, aggression, or invasion . . . are left homeless and stateless.” 85th Cong., 103 Cong. Rec. 14660. The enacted legislation required a foreign national to have failed to maintain his or her A or G nonimmigrant status, demonstrate that he or she is a person of good moral character and admissible to the United States, and that adjusting the foreign national’s status would not be contrary to the national welfare, safety, or security of the United States.⁵ The statute did not, however, contain explicit language requiring a foreign national to show compelling reasons demonstrating both an inability to return to the country of accreditation or that the adjustment would be in the national interest. Rather, the compelling reasons language was added by the Immigration and Nationality Act Amendments of 1981.⁶ Congress noted that this amendment “[r]eaffirms the original intent of Congress by requiring that the status of an alien diplomat cannot be adjusted to permanent residence status . . . unless the alien has shown compelling reasons” H.R. Rep. No. 97-264 (1981).

The need for this “reaffirming” and corrective legislation is explained in the Congressional record. During prior years, Congress opposed the recommended approval of numerous Section 13 applications “for failure to satisfy the criteria clearly established by the legislative history of the 1957 law.” H.R. Rep. No. 97-264 (1981). As noted in one report:

The Committee recalls that the purpose of this section, as reflected in the legislative history, is to permit the adjustment of immigration status to a limited number (50) of foreign diplomats who *for compelling reasons may find it impossible to return to the countries which accredited them to the United States* (Report No. 1199, 1st Session—85th Congress).

H.R. Rep. No. 94-1659 (1976) (emphasis added).

In keeping with the legislative history, we may consider only limited factors when determining whether a Section 13 applicant is unable to return to the country of accreditation. As this history shows, the phrase “unable to return” that was added to the statute in 1981 is linked to the purpose of the original 1957 legislation, which was to “provide for a limited class of aliens . . . who are left homeless and stateless” due to fundamental political upheavals. 103 Cong. Rec. 14,660 (1957). By including the phrase “are left homeless and stateless,” Congress signaled its intention that the significant political change (e.g., Communist and other uprisings, aggressions, or invasion) in the country of accreditation would occur while an applicant is in valid A or G nonimmigrant status. Similarly, in requiring an applicant to have “failed to maintain [A or G] status,” Congress believed the

⁵ Congress also capped the number of persons who could be granted permanent residency to 50 per year, and required that “[a] complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such adjustment of status. . . .” 8 U.S.C. § 1255b(c).

⁶ Pub. L. No. 97-116, 95 Stat. 161. Note that this amendment was passed after the Refugee Act of 1980.

significant political change would necessarily result in an applicant's inability to continue representing his or her country in an official capacity. 8 U.S.C. § 1255b(a).

Thus, there is a causal relationship between the significant political change and the impossibility of return resulting from an applicant's official duties while in A or G nonimmigrant status. This relationship is rooted in Section 13's intended purpose, which is to provide LPR status to individuals who performed diplomatic or semi-diplomatic duties for their countries of accreditation and would have been at risk of harm upon return to those countries because the governments they represented while in the United States underwent fundamental political change during the applicant's diplomatic service.

We recognize that a narrow interpretation of the term "compelling reasons" will exclude those applicants who desire to remain in the United States to seek and pursue career goals, or educational and employment opportunities for themselves or their family members that may not be available in the countries of accreditation. However, such an interpretation is correct in light of the classification's legislative history, as Section 13 was not created as an adjustment of status of category for all former A or G nonimmigrants who may face difficulties or disruptions upon returning to their countries of accreditation.⁷

Here, the Applicant has not established that a fundamental political change occurred in [redacted] between September 2010 and March 2014, the timeframe that he represented the [redacted] government in the United States. There is no evidence of an uprising, aggression, or invasion in [redacted] while he was in A-1 nonimmigrant status that has left him homeless and stateless. Although a new president was elected in January 2014, while the Applicant worked at the [redacted] consulate, the record indicates that President [redacted] was a member of the same political party as his predecessor, the National Party. Furthermore, the Applicant remained employed at the [redacted] consulate for several months while President [redacted] was in office. Therefore, while there was a political change in [redacted] it was not a fundamental political change resulting in the Applicant's inability to continue representing his country in an official capacity.

The record reflects that the Applicant and his wife experienced difficulty while working at the [redacted] consulate due to issues with M-F-R- and their reporting of alleged corruption, and he was eventually terminated. While unfortunate if true, the Applicant's claims are not related to a fundamental political change in [redacted] while he was employed at the [redacted] consulate. Furthermore, much of their reporting of alleged corruption and their criticism of President [redacted] and his government occurred after [redacted] 2014, outside of the timeframe that the Applicant was employed there.

We acknowledge evidence in the record indicating that the Applicant and his wife may experience difficulty upon return to [redacted] due to their reporting of alleged corruption and their political views. However, as stated above, the Applicant must establish that there was a fundamental political change in [redacted] and that his inability to return there as a result of that fundamental political change relates to the diplomatic or semi-diplomatic duties he performed on behalf of the government that accredited

⁷ We note that an applicant's ineligibility for Section 13 classification does not preclude him or her from seeking a valid immigration status through other means (e.g., asylum).

him. The Applicant has not demonstrated that he meets those requirements, because he has not shown that while he held A-1 nonimmigrant status, a fundamental political change occurred in which left him in effect homeless or stateless because of his prior government employment. Consequently, the Applicant has not established by a preponderance of the evidence the requisite compelling reasons that prevent his return to Honduras.

ORDER: The appeal is dismissed.