



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

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

In Re: 22475183

Date: NOV. 2, 2022

Appeal of National Benefits Center Decision

Form I-485, Application to Adjust Status

The Applicant, a citizen of Sierra Leone, seeks lawful permanent resident status under section 13 of the 1957 Immigration Act (Section 13). 8 U.S.C. § 1255b. Section 13 allows a noncitizen who was previously an A-1, A-2, G-1, or G-2 nonimmigrant to adjust status if certain criteria are met.¹

The Director of the National Benefits Center denied the application, concluding that the Applicant did not establish, as required, that there were compelling reasons preventing his return to Sierra Leone.

On appeal, the Applicant submits some of the previously provided documents and additional evidence. He asserts that he has established that he will be at risk of harm if he returns to Sierra Leone, and the Director's adverse decision was therefore in error.

The Applicant has the burden of proof to demonstrate eligibility for adjustment of status to that of a lawful permanent resident under Section 13. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Applicant has not met this burden.

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; (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(b); 8 C.F.R. § 245.3.²

¹ Pub. L. No. 85-316, 71 Stat. 642, amended by Pub. L. No. 97-116, 95 Stat. 161 (1981). The A nonimmigrant classification is for diplomats and foreign government officials (principal) as well as their immediate family members. The G nonimmigrant classification is for employees of certain international organizations (principal) and their immediate family members. See U.S. Department of State, *Directory of Visa Categories*, <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html>.

² If the first three eligibility requirements are met, applicants must also establish that compelling reasons demonstrate that their adjustment would be in the national interest and would not be contrary to the national welfare, safety, or security of the United States and that they are 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

A. Historical Background and Relevant Facts

The record reflects that the Applicant was last admitted to the United States in 1995, as an A-1 nonimmigrant to serve as the [REDACTED] at the Sierra Leone Embassy in Washington, D.C. He served in this position until August 1997.

In May 1997, while the Applicant was employed at the embassy the government of Sierra Leone was overthrown in a military coup led by General Johnny Paul Koroma and as a result President Kabbah, the Sierra Leone People Party (SLPP) leader, fled into neighboring Guinea.³ In March 1998 after the intervention of the Nigerian peacekeeping forces or Economic Community Military Observer Group (ECOMOG) President Kabbah returned to Sierra Leone. The fighting continued, but in January 1999 ECOMOG chased the rebels out of Freetown and reinstalled the Kabbah government. In May 1999 both sides declared a cease-fire, and took up negotiations which led to the Lomé Peace Accord signed in July 1999.⁴ The Lomé Peace Accord between the Revolutionary United Front (RUF) and the government of Sierra Leone committed the rebels to lay down their arms in exchange for representation in a new government. It also called for the establishment of a Truth and Reconciliation Commission to provide a forum for both victims and perpetrators of human rights violations during the conflict to tell their stories and facilitate genuine reconciliation. The United Nations Security Council subsequently created the United Nations Mission in Sierra Leone (UNAMSIL) to implement and oversee the peacekeeping provisions of this accord. In May 2002, President Kabbah won election and continued in power until 2007 when Ernest Bai Koroma and his All People's Congress (APC) party won a majority in parliament and power was peacefully transferred to the new government. SLPP returned to power in 2018 when Julius Maada Bio was sworn in as the new President of Sierra Leone after winning the 2018 presidential elections.

The Applicant previously provided evidence that following the coup the ambassador of Sierra Leone was recalled in June 1997; as the [REDACTED] he was requested to submit the [REDACTED] of the ambassador's recall, and he complied with the request. In August 1997 the Secretary of the Sierra Leonean [REDACTED] (Secretary) notified the Applicant that his actions against the ambassador were tantamount to impersonation and insubordination, as no world government, including the United States, had recognized the Koroma regime. The Secretary also informed the Applicant that as a result he had been recalled from his assignment, and instructed him to hand over all embassy property in his possession and return to Sierra Leone. The Applicant did not leave the United States and the ambassador subsequently issued a memorandum informing the embassy staff that the Applicant was discovered collaborating with the Armed Forces Revolutionary Council (AFRC) and RUF "coup mongers" and refused to obey the terms of the Secretary's letter of recall. In October 1997, the ambassador attempted to evict the Applicant and his family from his official Sierra Leonean government residence due to the recall from his post and loss of diplomatic immunity. The Applicant vacated the premises in December 1997, but did not return to Sierra Leone.

³ See generally U.S. Bilateral Relations Fact Sheets/Background Notes, *Sierra Leone*, <https://2009-2017.state.gov/outofdate/bgn/sierraleone/37798.htm>.

⁴ Available at: <https://peacemaker.un.org/sierraleone-lome-agreement99>.

The Applicant previously provided evidence that after President Kabbah returned to power in 1998, his government sentenced at least 16 civilians to death and executed 24 soldiers for treason, accusing them of collaborating with Koroma AFRC regime. In his 2014 sworn statement, the Applicant testified he was threatened by a group of [redacted] members of SLPP that if he ever returned to Sierra Leone they would get rid of him.⁵ He added that Sierra Leone was ravaged by the Ebola epidemic and that he “feared the consequences should [he] be forced to return.”

B. Compelling Reasons

A Section 13 applicant must show “[c]ompelling reasons demonstrating both that the applicant 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 (emphasis added) . . .” 8 U.S.C. § 1255b(b). Neither the statute nor the regulation at 8 C.F.R. § 245.3 defines the term “compelling reasons” or describes the factors for us to consider. Therefore, to meaningfully interpret Congress’ intent in requiring an applicant to show the existence of compelling reasons, we must turn to the statute’s legislative history.

When originally introduced in Congress in 1957, the purpose of Section 13 was to provide for lawful permanent residency 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.⁶ 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 to the statute in 1981 because on several occasions during the 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. 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). . . .

(Emphasis added). H.R. Rep. 94-1659 (1976).

⁵ The Applicant does not provide additional information about those threats on appeal.

⁶ 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).

The legislative history of Section 13 reflects that Congress created this immigration classification for a select few—high-ranking government officials whose return to their countries of accreditation was impossible due to dramatic political changes that had occurred during the officials’ diplomatic postings. Accordingly, we must interpret the term “compelling reasons” narrowly, consistent with the expressed intent of Congress, when determining whether an applicant is unable to return to the country of accreditation. Reasons that may be considered compelling are those resulting from a fundamental political change that has, in essence, rendered an applicant homeless or stateless, making it impossible for the applicant to return to the country of accreditation because of the A or G nonimmigrant status that the applicant once held.

An applicant bears the burden not only of demonstrating the fundamental political change that has occurred, but also showing that, as a result, it has become impossible to return to that country because of his or her prior A or G nonimmigrant status and that the applicant has thus been rendered homeless or stateless.

We realize 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 medical, educational, and employment opportunities for themselves or their family members that may not be available in the countries of accreditation. However, we believe that a narrow interpretation is appropriate 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.

In denying the adjustment of status request, the Director acknowledged the Applicant’s claims of having been threatened by SLPP members and the general difficulties he might face upon returning to Sierra Leone, but determined that the risks or dangers experienced by the population as a whole did not constitute “compelling reasons” for the purposes of Section 13.

The Applicant asserts that this determination was in error, and states that he fears being placed on trial for treason if he returns to Sierra Leone, because of the killings of suspected collaborators and the public statements the Secretary made about his support of AFRC. He reiterates that following the coup and subsequent restoration of the Kabbah government there were many career civil servants who were tried, convicted, and executed simply because they remained in their jobs during the brief AFRC rule, including secretary to the President, S.A.T. Bayoh and many members of the military. The Applicant states further that according to the 2006 U.S. Department of State Human Rights Report (DOS report), the government has made little progress in addressing its own Truth and Reconciliation Commission’s recommendations. He further states that this showed the government’s inability to come to terms with the events of 1997, and a continued indifference to the people who were caught in the violence. The Applicant explains that he was wrongly accused of collaborating with the rebel regime which overthrew the governing party, SLPP, and that because SLPP still holds substantial political influence in Sierra Leone, compelling reasons exist why he and his family are unable to return there.

The evidence in support of these statements includes letters from a church minister and a solicitor at law from Sierra Leone (dated in 2014 and 2008, respectively), 1998 online articles, and 2006 and 2020 DOS reports on human rights in Sierra Leone.

We have reviewed the entire record and conclude that it is insufficient to establish compelling reasons that prevent the Applicant's return to Sierra Leone at this time.

As an initial matter, most of the evidence is dated from 24 to 14 years ago and does not appear to reflect current political situation in Sierra Leone. Specifically, while the 1998 articles report that civilians and soldiers accused of collaborating with the Koroma regime were tried and sentenced without proper legal process by the Kabbah government, the Applicant does not provide evidence that the government of Sierra Leone subsequently targeted and detained civil servants who continued to work during the period when the Koroma regime was in power. Rather, the May 1999 Lomé Peace Accord between the Sierra Leonean government and the rebel forces contained an amnesty provision for AFRC combatants and collaborators, excluding only those who engaged in crimes of genocide, crimes against humanity, war crimes, and other serious violations of international humanitarian law. We note that the Applicant resided in the United States during the coup, and there is nothing in the record to suggest that he committed acts which would make him ineligible for the amnesty. Furthermore, according to the 2006 DOS report on human rights, there were no reports that the government or its agents committed any politically motivated killings or disappearances during that year. The report also does not indicate any instances of the government's adverse actions against individuals who were accused of supporting or collaborating with AFRC in the past. While the 2020 DOS report references several reports that the government or its agents committed arbitrary or unlawful killings, it does not include any further details about the victims, circumstances, or possible motives for those killings. Moreover, there is nothing in the report to suggest that the current government of Sierra Leone elected in 2018 is targeting former diplomats or career civil servants for their alleged roles in the 1997 coup.

We acknowledge the statements of [redacted] a barrister and solicitor in [redacted] Sierra Leone that if the Applicant "had returned to Sierra [sic] or Guinea in 1997 he would have been arrested and detained and charged with treason" and recognize that many individuals were arrested and detained following the reinstatement of the Kabbah government in 1998. However, the Applicant has not shown that the detentions and arrests continued following the 1999 peace agreement and subsequent elections, or that he would be targeted by the current government of Sierra Leone based on the past allegation of his collaboration with AFRC. Similarly, while in his 2014 letter the church minister advised the Applicant not to return to Sierra Leone because "there are people in the SLLP who have not forgiven [him]" for sending financial implications correspondence to the ambassador recalled by the Koroma regime, the record does not contain evidence that the Applicant is at risk of retaliation by the current government based on his actions from over 20 years ago despite the subsequent amnesty.

We also recognize that the DOS reports point to significant human rights issues in Sierra Leone, including unlawful or arbitrary killings by the government; harsh and life-threatening prison conditions; and serious acts of corruption. Nevertheless, given the amnesty provision in the 1999 peace accord and lack of evidence that diplomats who served during the period when AFRC was in power are still subject to detention, harassment, or persecution, we cannot conclude that the Applicant has demonstrated the requisite compelling reasons that make him unable to return to Sierra Leone.

As stated, the Applicant must establish that there was a fundamental political change in Sierra Leone, *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 him. The Applicant has not demonstrated that he meets both of these requirements. Although he has shown that the government that accredited him was temporarily ousted as a result of the 1997 coup, he has not established that he was left in effect homeless or stateless because of his prior government employment as the [redacted] at the Sierra Leonean embassy in the United States.

III. CONCLUSION

The Applicant is ineligible to adjust status under Section 13 because he has not met his burden of proof to show that there are compelling reasons that prevent his return to Sierra Leone. Accordingly, we need not address whether the Applicant merits adjustment of status under Section 13 in the national interest and as a matter of discretion.⁷

ORDER: The appeal is dismissed.

⁷ Instead, we reserve those issues. Our reservation of the issues is not a stipulation that the Applicant meets these additional requirements and should not be interpreted as such. Rather, as the Applicant has not established that he meets the threshold eligibility criteria for adjustment under Section 13, there is no constructive purpose in considering whether he satisfies the remaining criteria for such adjustment, because it would not change the outcome.