U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: WASHINGTON DISTRICT Date: AUG 30 2007

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957

Act of 1940, 8 U.S.C. § 601(g).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Washington, D.C. and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Sri Lanka who is seeking to adjust her status to that of lawful permanent resident under section 13 of the Immigration and Nationality Act of 1957 (1957 Act), Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

The district director denied the application for adjustment of status after determining that the applicant had filed the Form I-485, Application to Register Permanent Residence or Adjust Status, prior to the termination of her diplomatic status, had not performed diplomatic or semi-diplomatic duties for the Embassy of the Gabonese Republic, her employer, and had failed to demonstrate that compelling reasons prevented her return to Sri Lanka or that her adjustment would serve U.S. interests. For all these reasons, the district director found the applicant ineligible for adjustment under the 1957 Act.

On appeal, counsel contends that the district director incorrectly stated the date on which the applicant was terminated from her position at the Gabonese embassy and erred in finding that she did not have compelling reasons that prevented her return to Sri Lanka. He further asserts that the applicant's duties for the Embassy of Gabon were diplomatic in nature and that her adjustment would be in the U.S. national interest. In support of his statements regarding the risks that would be faced by the applicant upon return to Sri Lanka, counsel submits country conditions information related to Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE).

Section 13 of the Act of September 11, 1957, as amended on December 29, 1981, by Pub. L. 97-116, 95 Stat. 1161, provides, in pertinent part:

> (a) Any alien admitted to the United States as a nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Act, who has failed to maintain a status under any of those provisions, may apply to the Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.
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> (b) If, after consultation with the Secretary of State, it shall appear to the satisfaction of the Attorney General that the alien has shown 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, that the alien is a person of good moral character, that he is admissible for permanent residence under the Immigration and Nationality Act, and that such action would not be contrary to the national welfare, safety, or security, the Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

Pursuant to 8 C.F.R. § 245.3, eligibility for adjustment of status under section 13 of the 1957 Act is limited to aliens who were admitted into 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 who performed diplomatic or semi-diplomatic duties and to their immediate families, and who establish that there are compelling reasons why the applicant or the member of the applicant's immediate family is unable to return to the country represented by the government that accredited the applicant, and that adjustment of the applicant's status to that of an alien lawfully admitted to permanent residence would be in the national interest. Aliens whose duties were of a custodial, clerical, or menial nature, and members of their immediate families, are not eligible for benefits under section 13.

The AAO now turns to a review of the evidence of record, including the country conditions information counsel submits on appeal. In making a determination of statutory eligibility, Citizenship and Immigration Services (CIS) is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The district director's decision determined that the applicant had filed the Form I-485 prior to the termination of her diplomatic status on November 30, 1997 and was, therefore, ineligible to adjust under section 13 of the 1957 Act. On appeal, counsel contends that the district director incorrectly stated the date on which the applicant's status was terminated. He asserts that the applicant's employment with the Gabonese embassy ended on April 30, 1996 and that she, therefore, no longer held diplomatic status when she filed the Form I-485 on September 26, 1997. While the AAO notes that the record contains an April 9, 1996 letter from the Gabonese embassy terminating the applicant's employment as of April 30, 1996, the date on which the applicant ceased to work for the Gabonese government is not the critical date in determining eligibility for adjustment under section 13 of the 1957 Act, but the date on which she ceased to hold diplomatic status. The record contains a September 24, 2001 certification from the Chief of the Diplomatic Liaison Division in the Visa Office at the Department of State (Form I-88) that indicates the applicant held diplomatic status in relation to her position as an executive secretary with the Gabonese embassy from November 20, 1989 to November 30, 1997. Therefore, the applicant still held diplomatic status at the time she filed the Form I-485 and is ineligible for consideration under section 13 of the 1957 Act.

The record also fails to establish that the applicant performed diplomatic or semi-diplomatic duties while employed as an executive secretary by the Gabonese embassy. The Department of State certificate just noted indicates that the applicant was part of the embassy's administrative and technical staff. While the AAO acknowledges the applicant's statements regarding her representation of the Gabonese government with the Pentagon and Department of State, including her negotiation of the sale of military equipment, it finds these unsupported claims to be insufficient to establish her performance of diplomatic or semi-diplomatic duties. Going on record without supporting documentary evidence is not sufficient to meet the applicant's burden of proof in this proceeding. *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)). In that the applicant has submitted no corroboration of her claimed responsibilities from the Gabonese embassy or a previous supervisor at the embassy, she has failed to document that she performed duties beyond those of an administrative or technical nature.

At the time of filing, the applicant indicated that the compelling reasons preventing her return to Sri Lanka were the terrorist threat presented by the LTTE and her son's inability to read or write in Sinhala. On appeal, counsel points to the Department of State's designation of the LTTE as a terrorist organization engaged in terrorist acts against both government and civilian targets. He contends that as the LTTE is in control of large portions of the country and terrorizes the Sri Lankan population in the sections of the country that it does not control, the threat to

the applicant is great. In support of the applicant's concerns regarding her son's return to Sri Lanka when he does not read or write in Sinhala, counsel asserts that, although the English language is widely spoken in Sri Lanka, the school system does not teach in English.

The AAO notes the country conditions information submitted by the applicant regarding the LTTE and acknowledges their continuing attacks against civilian and military targets. However, it finds that the applicant has failed to offer evidence that she would be at risk from these LTTE attacks if she returned to Sri Lanka. Based on the address she provided on the Form I-589, Application for Asylum and for Withholding of Deportation, the applicant's previous residence in Sri Lanka was Moratuwa, a city located near Colombo in southeastern Sri Lanka. The Form G-325A, Biographic Information sheet, she submitted at filing states that her parents also reside in Moratuwa. The AAO has reviewed the country conditions information submitted on appeal, including the State Department reports on LTTE activity that indicate the LTTE targets military and political leaders in Colombo and other urban centers. However, it notes that this documentation, as well as other reports issued by the U.S. Department of State, state that the danger from the LTTE is found in the north and east of Sri Lanka and that most of the country remains largely unaffected. *See* http://travel.state.gov/travel/cis_pa_tw/tw/tw_1764.html. In that the applicant, who is neither a Sri Lankan military or political official, has failed to indicate a basis on which she would be in danger from the LTTE in the southeastern area of Sri Lanka where she has previously lived, she has not established that she would be at risk if she returned home.

The AAO also acknowledges the applicant's concerns regarding the impact of a return to Sri Lanka on her son 's education since he does not, the applicant asserts, speak or write Sinhala. If enrolled in the Sri Lankan public school system where Sinhala and Tamil are the primary languages of instruction, the applicant's son may well face difficulties. Yet, however disturbing such difficulties may be to the applicant, they do not offer a compelling reason, as envisaged by the requirements at 8 C.F. R. § 245.3, that prevents the applicant's return to Sri Lanka.

On appeal, counsel also contends that the applicant's adjustment is in the U.S. national interest because it is in the U.S. national interest to adjust former diplomats rather than force them to return to countries in which they will be threatened by terrorism. In that the record does not establish that the applicant is a former diplomat or that she is facing return to a country where she will be threatened by terrorism, counsel's assertions are not persuasive. Without supporting documentary evidence, the assertions of counsel are not sufficient to meet the burden of proof in this proceeding. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

For the reasons already discussed, the AAO finds that the applicant is not eligible for section 13 adjustment consideration. Further, she has failed to establish that she performed diplomatic or semi-diplomatic duties in the United States, that there are compelling reasons she is unable to return to Sri Lanka or that her adjustment would be in the U.S. national interest. Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. The applicant failed to meet that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.