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: MAR 12 2009

IN RE: [redacted]

APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John P. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office 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 Sierra Leone who is seeking to adjust his status to that of lawful permanent resident under section 13 of the Act of 1957 ("Section 13"), Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, 8 U.S.C. § 1255b, 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 field office director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent his return to Sierra Leone. The field office director also noted that the Department of State issued its opinion on November 30, 2007 advising that it could not recommend this matter as the applicant's reasons to remain in the United States are not compelling.

On appeal, counsel for the applicant asserts that the field office director erred in her decision. Counsel submits a brief and documentation in support of the appeal.

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 [Department of Homeland Security] 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 [Department of Homeland Security] 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 [Department of Homeland Security], in its discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the [Department of Homeland Security] approving the application for adjustment of status is made. 8 U.S.C. § 1255b(b).

Pursuant to 8 C.F.R. § 245.3, eligibility for adjustment of status under Section 13 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.

A review of the record establishes the applicant's eligibility for consideration under section 13 of the 1957 Act. He entered the United States in A-1 classification in January 1995 to serve as the Head of the Chancery of the Republic of Sierra Leone. The Department of State was notified of the termination of the applicant's A-1 status in August 1997. Accordingly, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(i) of the Act but no longer held that status at the time he filed his application for adjustment on March 12, 2004.

The issue before the AAO in the present case is whether the record establishes that the applicant has compelling reasons that preclude his return to Sierra Leone, a requirement set forth in section 13(b) of the 1957 Act.

The AAO concurs with the field office director's determination that the applicant failed to establish compelling reasons that prevent his return to Sierra Leone. The legislative history of Section 13 shows that Congress intended that "compelling reasons" relate to political changes that render diplomats and foreign representatives "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which accredited them. Section 13 requires that an applicant for adjustment of status under this provision have "compelling reasons demonstrating that the alien is *unable* to return to the country represented by the government which accredited the" applicant. (Emphasis added). The term "compelling" must be read in conjunction with the term "unable" to correctly interpret the meaning of the words in context. Thus, reasons that are compelling are those that render the applicant unable to return, rather than those that merely make return undesirable or not preferred from the applicant's perspective.

According to the American Heritage Dictionary, Fourth Edition, the plain meaning of the term "unable" is "lacking the necessary power, authority, or means." Thus, the "compelling reasons" standard is not a merely subjective standard. Aliens seeking adjustment of status under Section 13 generally assert the subjective belief that their reasons for remaining in the United States are compelling, or that it is interesting or attractive to them to remain in the United States rather than return to their respective countries. What Section 13 requires, however, is that the reasons provided by the applicant demonstrate compellingly that the applicant is unable to return to the country represented by the government which accredited the applicant. Even where the meaning of a statutory provision appears to be clear from the plain language of the statute, it is appropriate to look to the legislative history to determine "whether there is 'clearly expressed legislative intention' contrary to that language, which would require [questioning] the strong presumption that Congress expresses its intent through the language it chooses." *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 433, fn. 12 (1987). The legislative history supports the plain meaning of the language in Section 13 that those eligible for adjustment of status under Section 13 are those diplomats that have been, in essence, rendered stateless or homeless by

political upheaval, hostilities, etc., and are thus *unable* to return to and live in their respective countries.

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

Preliminarily, the AAO acknowledges that the history of Sierra Leone shows a country that for many years was in a state of political upheaval where horrific atrocities practiced by rebel groups upon civilians and young children reigned. The applicant was appointed as at the Embassy of Sierra Leone in Washington, DC in January 1995, during a time of continuing civil war that began in 1991. The record does not include the applicant's appointment letter, but country conditions indicate that at the time of the applicant's appointment to Washington DC, the government of was in place. In January 1996, the government was ousted in a military coup by A short time later, in February 1996, was elected president and stepped down. In May 1997, in prison awaiting a treason trial, led a military junta, the Armed Forces Revolutionary Council (AFRC) and fled to neighboring Guinea. suspended the constitution, banned demonstrations, and abolished political parties. continued in power until ousted by a combination of international forces and in February/March 1998 returned to power. won election in May 2002 and continued in power as president until elections in August 2007 when won the presidency, and his All People's Congress won a majority in parliament, and power was peacefully transferred to the new government.

The following information presents the backdrop of the applicant's claim that compelling reasons prevent his return to Sierra Leone. While the applicant was in his position as Head of Chancery, the rebel government of issued an immediate recall of the Sierra Leonean Ambassador to the United States, . On August 14, 1997, the applicant was requested in his position as Head of the Chancery to the Embassy of Sierra Leone to submit the financial implications of the Ambassador's recall, which the applicant forwarded to . The request was signed by for the director-general of the Ministry of Foreign Affairs, Sierra Leone. On August 21, the Secretary of the Ministry of Foreign Affairs of Sierra Leone, operating out of Guinea, notified the applicant that his actions against the were tantamount to impersonation and/or insubordination as no government in the world had recognized the regime in Freetown, Sierra Leone. The letter indicated that the applicant should notify and should conclude the details of his travel arrangements. On August 25, 1997, Ambassador issued a memorandum informing the Sierra Leone Embassy staff that the applicant had been discovered collaborating with the AFRC/RUF. On August 28, 1997 the Secretary General of AFRC informed that he had been recalled and further sent notice to the United States Department of State that had been recalled. On August 29, 1997 formally requested that the applicant surrender diplomatic privileges and lifted the applicant's diplomatic immunity effective as of August 25, 1997 for "collaborating with criminal rapists, looters, killers, liars, kidnappers, hooligans, and amputators of the AFRC-RUF coup junta." On

October 7, 1997, still acting as Ambassador, attempted to evict the applicant and his family from the official Sierra Leone residence. In December 1997, the applicant left the residence. He did not return to Sierra Leone.

Subsequent to return to power in 1998, his government sentenced at least 16 civilians to death and executed 24 soldiers for treason even while international organizations noted the unfairness of the one-week trial for these individuals. In the applicant's August 28, 2006 sworn statement before a USCIS immigration officer, the applicant indicated that the Acting Deputy Director General of the Ministry of Foreign Affairs, under the rebel government, was charged with treason and died while waiting for his execution. The applicant expressed fear that he would be similarly treated if he returned to Sierra Leone.

On appeal, counsel for the applicant asserts that there were many career civil servants who were tried, convicted, and executed following return to power in 1998, even though those individuals simply remained in their jobs following s coup. Counsel acknowledges that Sierra Leone established a Truth and Reconciliation Commission but notes that the 2006 State Department Human Rights report noted that the government had made little progress in addressing the Commission's recommendations. Counsel contends that the applicant ordinarily would not fear returning to Sierra Leone to clear his name, but since other trials of alleged collaborators have consistently lacked transparency and fairness, the applicant fears that any verdict against him would be predetermined. Counsel includes additional letters and articles regarding the events taking place in 1998. Counsel also claims that USCIS conducted only cursory interviews of the applicant and did not issue a request for further evidence or a notice of intent to deny so that the applicant would have had the opportunity to present further evidence sufficient to establish his claim.

Preliminarily, the AAO observes that the applicant has had opportunity on appeal to present further evidence in support of his claim. In addition, the AAO finds that the field office director is not required to issue a request for further information in every potentially deniable case. If the field office director determines that the initial evidence supports a decision of denial, the regulation at 8 C.F.R. § 103.2(b)(8) does not require solicitation of further documentation. Moreover, it is not clear what remedy would be appropriate beyond the appeal process itself. The applicant has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the matter simply to afford the applicant the opportunity to supplement the record once again.

The AAO finds that the applicant has not established compelling reasons that prevent his return to Sierra Leone. The peace agreement reached between the Sierra Leonean government and rebel forces in 1999 included an amnesty provision for AFRC combatants and collaborators for their actions, unless their actions included violations of a grave nature including crimes against humanity, war crimes, and other serious violations of international humanitarian law. As the applicant resided in the United States during this time, there is no evidence that he took part in any violations of a grave nature. In addition, although the restored government reportedly detained over 2,000 individuals after returning to power, the Sierra Leone government assured the United Nations Observer Mission in Sierra Leone that it had released all persons detained by them by the fall of 1999. The AAO notes further that the election of in August 2007 and a majority of his All People's Congress party in parliament

over the Sierra Leonean People's Party of Kabbah and the peaceful exchange of power is further evidence that the Sierra Leone government is attempting to return to the rule of law.

The AAO has considered the statement of a barrister and solicitor in Freetown, Sierra Leone. Mr. provides his opinion that if the applicant had returned to Sierra Leone or Guinea in 1997 he would have been arrested, detained, and charged with treason and executed. Mr. also contends that if the Sierra Leone People's Party returns to power, the applicant will be charged with treason. The AAO acknowledges that opinion regarding what would have happened to the applicant if he had returned to Sierra Leone in 1997 has some basis in fact, as country condition information shows that many individuals were arrested and detained. However, by the fall of 1999, the Sierra Leone government had released many of those detained and in fact assured the United Nations Observer Mission in Sierra Leone that it had released all persons detained by them by this time. Mr. opinion that if the Sierra Leone People's Party returns to power, the applicant will be charged with treason is only speculative. The AAO finds that has not substantiated this opinion with factual evidence. The record does not support the speculation that the past detentions after the reinstatement of the "legitimate" government in 1998 would re-occur. Rather, country conditions show a peaceful exchange of power in 2007 and the continuing attempts to maintain order and prevent a return to the past instability. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The opinion of regarding what might happen if the government regains power is insufficient to establish that the applicant's fear of returning to Sierra Leone at this time is well-founded.

The AAO recognizes the U.S. State Department's Country Report on Sierra Leone, as well as other sources that indicate that the government in Sierra Leone continues to be subject to corruption and political influence. The AAO also acknowledges that country conditions in Sierra Leone show that the universal freedoms enjoyed by many individuals in the United States are not routinely available in Sierra Leone. The AAO has considered the applicant's statements and the assertions of counsel on appeal; however, in light of the amnesty provision in the peace agreement of 1999 and the lack of additional country condition information subsequent to 1999 that demonstrates that career civil servants who served during the period when AFRC was in power are subject to detention, harassment, or persecution, the applicant has not established compelling reasons that prevent his return to Sierra Leone. The record does not provide substantive evidence demonstrating that the applicant is at greater risk of harm at this time because of his past government employment, political activities or other related reasons. The applicant has not established that he is a target of the government of Sierra Leone. Moreover, the U.S. State Department has objected to the applicant being granted adjustment of status pursuant to section 13 and has indicated that it does not believe that compelling reasons prevent the applicant's return to Sierra Leone. *See* Interagency Record of Request (Form I-566).

The evidence of record does not show that the applicant is unable to return because of any action or inaction on the part of the government of Sierra Leone or other political entity there as required under Section 13. The AAO finds that in this matter the applicant has not established compelling reasons that

relate to political changes now in effect that render diplomats and foreign representatives "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which accredited them. The AAO does not find that the applicant's circumstances demonstrate that he and his family are unable to return to Sierra Leone. The applicant has failed to meet his burden of proof in this regard. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to Sierra Leone, the question of whether adjustment of status would be in the national interest need not be addressed.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. He has failed to establish that there are compelling reasons preventing his return to Sierra Leone. Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he or she is eligible for adjustment of status. The applicant has failed to meet that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.