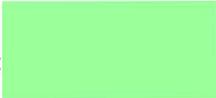


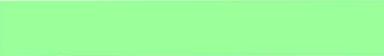


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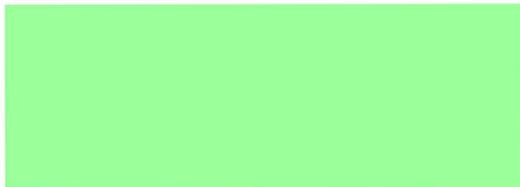


DATE: **MAR 04 2013** OFFICE: NATIONAL BENEFITS CENTER FILE: 

IN RE: Applicant: 

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:

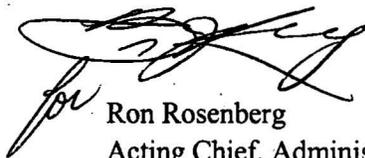


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the National Benefits Center Director 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 her 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 the spouse of an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(A)(i).

The director denied the application for adjustment of status on the grounds that the applicant had failed to demonstrate that compelling reasons prevent her return to Sierra Leone. *Decision of National Benefits Center Director*, dated July 20, 2012.

On appeal, counsel contends that the director erred in determining that the applicant as a dependent family member is ineligible for adjustment of status under Section 13. Counsel asserts that the applicant has compelling reasons that prevent her return to Sierra Leone. *See Form I-290B and attachment*. It is noted that counsel indicates on the appeal form that a brief and/or additional evidence will be submitted within 30 days. *Form I-290B*, filed August 23, 2012. To date, however, no additional correspondence has been presented by counsel or the applicant.

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.

(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 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 issue in this proceeding is whether the applicant is unable to return to the country represented by the government that accredited the principal alien, her spouse.

The AAO notes that the express language of 8 C.F.R. § 245.3—“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” (emphasis added)—allows for consideration both of reasons compelling to the principal alien and reasons compelling to dependent family members. In most cases, these reasons are the same or similar, and the principal alien articulates the compelling reasons why all the applicants are unable to return. However, it is possible for dependent family members to establish eligibility for adjustment of status under Section 13 even where the principal alien is not also an applicant, if the principal alien would have met the eligibility requirements. Unlike the eligibility requirements concerning status of admission, failure to maintain status and performance of semi-diplomatic or diplomatic duties, all eligibility criteria based on past events, the requirement that an applicant demonstrate compelling reasons why he or she is unable to return to the country represented by the government that accredited the applicant refers to the current state of affairs in that country and the nature of the applicant's current relationship to the government and/or other entities or individuals in that country.

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. 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 for Section 13 reveals that the provision was intended to provide adjustment of status for a “limited class of . . . worthy persons . . . left homeless and stateless” as a consequence of “Communist and other uprisings, aggression, or invasion” that have “in some cases . . . wiped out” their governments. Statement of Senator John F. Kennedy, *Analysis of Bill to Amend the Immigration Nationality Act*, 85th Cong., 103 Cong. Rec. 14660 (August 14, 1957). The phrase “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 (October 2, 1981). 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 has considered the applicant’s claim that compelling reasons prevent her and her family members from returning to Sierra Leone, the country represented by the government that accredited them. However, the record lacks evidence to demonstrate that the applicant is unable to return to Sierra Leone for compelling reasons. There is no evidence that the government of Sierra Leone opposes the applicant’s return to the country, or will seek to harm her for any particular reason articulated in the record. In a sworn statement dated July 8, 2011, the applicant stated that she would suffer persecution if she returns because the present government has been persecuting members of the former government. The record, however, does not include documentation to establish her claim and why she and her family cannot return to Sierra Leone. The applicant does not provide any further details. The AAO acknowledges that the “compelling reasons” standard is a different standard than the persecution standards applicable in asylum or withholding of removal adjudications. Nevertheless, a reasonable fear of persecution in the country represented by the government that accredited an applicant for adjustment of status under Section 13 is, in most cases, strong evidence that compelling reasons prevent his or her return there.

There is no evidence of record to establish that the applicant and her family will be affected by political conditions in Sierra Leone. It is noted that in an undated letter the applicant’s spouse, who served in the diplomatic position, indicates that he is a Barrister and Solicitor of the High Court of Sierra Leone, and the applicant stated in her sworn statement that her husband helps her financially. The evidence does not show that the applicant has been rendered essentially “homeless” or “stateless” as a consequence of these conditions. Therefore, since the applicant has failed to demonstrate that she is unable to return to Sierra Leone because of compelling reasons, it is not necessary to address whether her adjustment of status would be in the national interest.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. She has failed to establish that there are compelling reasons preventing her return to Sierra Leone. Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the

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applicant to establish that she is eligible for adjustment of status. The applicant has failed to meet that burden. Accordingly, the decision of the director will be affirmed.

ORDER: The appeal is dismissed.