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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: **OCT 31 2013** Office: NATIONAL BENEFITS CENTER FILE: [REDACTED]

IN RE: Applicant: [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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron M. Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, National Benefits Center. The matter 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 director denied the application for adjustment of status after determining that the applicant had failed to demonstrate compelling reasons that prevent his return to Sierra Leone. The director also noted that the U.S. Department of State issued its opinion on January 26, 2013 recommending that the applicant's request for adjustment of status in the United States be denied because the applicant presented no compelling reasons that prevent his return to Sierra Leone. *See Director's Decision*, dated March 7, 2013.

The director also denied the application of the applicant's spouse ( [REDACTED] ), and his daughter ( [REDACTED] ) who each submitted an Application to Register Permanent Residence or Adjust Status (Form I-485), seeking to adjust status under Section 13 as derivative dependents of the applicant. The director issued separate decisions denying the applications. The applicant's dependents each filed a separate Form I-290B, Notice of Appeal or Motion. The AAO will issue a separate decision for each of the dependents.

On April 5, 2013, counsel for the applicant submitted a Form I-290B, Notice of Appeal or Motion, a letter brief dated April 22, 2013, and copies of other documents including country condition reports on Sierra Leone in support of the appeal.<sup>1</sup>

*Applicable Law*

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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<sup>1</sup> The AAO notes that the applicant had previously submitted a Form I-485 in April 2004, which was denied by the director and the subsequent appeal was dismissed by the AAO in March 2009. The AAO also notes that the other documents and country condition information submitted by counsel in support of the current appeal had been previously submitted into the record.

(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.

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 and 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 of Section 13, including the 1981 amendment adding the term "compelling reasons," 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.

What Section 13 requires 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. The AAO finds that a review of the totality of the Section 13 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.

*Pertinent Facts and Procedural History*

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, United States 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).

A review of the record establishes the applicant's eligibility for consideration under Section 13 of the 1957 Act. The applicant was admitted into the United States on January 23, 1995, in an A-1 nonimmigrant status and served as [REDACTED] for the Sierra Leone Embassy in Washington, D.C. until his term was terminated in August 1997. As the [REDACTED] the applicant performed duties that were supportive of the Ambassador's diplomatic duties. The applicant filed the current Form I-485, Application to Register Permanent Residence or Adjust Status, on April 16, 2009. Therefore, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(ii) of the Act but no longer held that status at the time he filed the application for adjustment of status on April 16, 2009.

The issues before the AAO in the present case are, therefore, whether the record establishes that the applicant has compelling reasons that preclude his return to Sierra Leone and that his adjustment of status would serve U.S. national interests – requirements set forth in section 13(b) of the 1957 Act.

The AAO takes administrative notice that the history of Sierra Leone shows a country that for many years was involved in civil war that began in 1991, political upheaval involving coups and counter coups where horrific atrocities were committed by rebel groups upon civilians and young children. During this period, the applicant entered the United States in 1995 and served as [REDACTED] at the Embassy of Sierra Leone in Washington. 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 Valentine Strasser was in power. In January 1996, the Strasser government was ousted in a military coup by Brigadier Julius Maada Bio and in February 1996, Ahmad Tejan Kabbah, was elected president and Maada Bio stepped down. In May 1997, Major Johnny Paul Koroma, in prison awaiting a treason trial, led a military junta, the Armed Forces Revolutionary Council (AFRC) that took power by force and President Kabbah fled to neighboring Guinea. Johnny Paul Koroma suspended the constitution, banned demonstrations, and abolished political parties. Koroma continued in power until he was ousted by a combination of international forces and in February/March 1998 Kabbah was restored back as the president of Sierra Leone. In May 2002, Kabbah won election and continued in power as president until elections in August 2007 when Ernest

Bai Koroma won the presidency, and his All People's Congress won a majority in parliament, and power was peacefully transferred to the new government.

The applicant presented the following background information as compelling reasons that prevent his return to Sierra Leone. While the applicant was in his position as [REDACTED] the rebel government of Johnny Paul Koroma issued an immediate recall of the Sierra Leonean Ambassador to the United States, John Ernest Leigh. On August 14, 1997, the applicant was requested in his position as [REDACTED] to the Embassy of Sierra Leone to submit the financial implications of the Ambassador's recall, which the applicant forwarded to Ambassador Leigh. The request was signed by W.S. Bangura, 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 Ambassador Leigh were tantamount to impersonation and/or insubordination as no government in the world had recognized the Johnny Paul Koroma regime in Freetown, Sierra Leone. The letter indicated that the applicant should notify Freetown and should conclude the details of his travel arrangements. On August 25, 1997, Ambassador Leigh 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 Ambassador John Leigh that he had been recalled and further sent notice to the United States Department of State that Ambassador John Leigh had been recalled. On August 29, 1997, Ambassador John Leigh 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, John Leigh, 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 President Kabbah's 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 William Bangura, the Acting Deputy Director General of the Ministry of Foreign Affairs, under the Johnny Paul Koroma 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 the applicant continued his duties as [REDACTED] after the overthrow of the Kabbah government by the AFRC, and upon reclaiming power by the Kabbah administration against the AFRC, the applicant was charged as a collaborator of the rebel regime. Counsel claims that many career civil servants were tried, convicted, and executed following Kabbah's return to power in 1998, even though those individuals simply remained in their jobs following Johnny Paul Koroma's coup. Counsel further claims that the applicant would be placed on trial for treason if he returned to Sierra Leone. Counsel includes additional letters and articles regarding the events taking place in 1998 including a letter from [REDACTED] from Freetown, Sierra Leone.

*Compelling Reasons Discussed*

The AAO has reviewed the applicant's statements, supportive statements from individuals in Sierra Leone, counsel's brief on appeal and country condition information submitted in support of the application and find them insufficient to establish compelling reasons that prevent the applicant's return to Sierra Leone. We note that 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 Kabbah 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. We also note that the election of Ernest Bai Koroma in August 2007 and more recently on November 17, 2012, 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 [REDACTED] a barrister and solicitor in [REDACTED] Sierra Leone. Mr. [REDACTED] 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. [REDACTED] also contends that if the Sierra Leone People's Party returns to power, the applicant will be charged with treason. The AAO acknowledges that Mr. [REDACTED] opinion regarding what would have happened to the applicant if he had returned to Sierra Leone in 1997 may have 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. [REDACTED] 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 Mr. [REDACTED] 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 again in 2012, 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 Mr. [REDACTED] regarding what might happen if the Kabbah 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. Department of State issued its opinion on January 26, 2013 recommending that the applicant's adjustment of status be denied because he has presented no compelling reasons that preclude his 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 evidence of record in this case is insufficient to establish that the applicant in his role as a returning diplomat would be at greater risk of harm because of his past government employment, political activities or other related reason. Accordingly, 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 his adjustment of status would be in the national interest of the United States need not be addressed.

The eligibility for relief under section 13 is limited and ineligibility for section 13 relief does not preclude the applicant from pursuing other benefits provided under the immigration laws of the United States.

#### *Conclusion*

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 that preclude 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.