



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

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

In Re: 25104822

Date: SEPT. 20, 2023

Appeal of National Benefits Center Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant, a national of Sri Lanka, 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 Sri Lanka. On appeal, the Applicant submits additional evidence and reasserts eligibility.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

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

Although the Director denied the application solely because the evidence did not demonstrate that compelling reasons render the Applicant unable to return to Sri Lanka, we have identified an additional basis of the Applicant's ineligibility for adjustment of status under Section 13, as the evidence also does not establish that the Applicant's A-1 nonimmigrant status had been terminated by the time he filed the instant adjustment application in April 2017. We will therefore address both issues in this decision, as each is a separate basis of ineligibility for the requested benefit.

A. Failure to Maintain Status

A Section 13 applicant must not only have been admitted to the United States as an A-1, A-2, G-1, or G-2 nonimmigrant, but must have also failed to maintain that status. 8 U.S.C. § 1255b(a). Thus, an applicant's A or G status must have been terminated prior to the filing date of the Section 13 application. *See* 8 C.F.R. § 103.2(b)(1) (providing that an applicant must establish that all eligibility requirements for the immigration benefit have been satisfied as of the filing date and continuing through adjudication).

The U.S. Department of State's Visa Office advises U.S. Citizenship and Immigration Services (USCIS) of a principal's official position, as well as the dates of the onset and termination of the principal's and immediate family members' status. Here, the Visa Office notified USCIS that the Applicant's A-1 status began on September 25, 2014, and that it was terminated on August 10, 2017. Because according to the Visa Office the Applicant's A-1 nonimmigrant status had not been terminated until August 10, 2017, the Applicant had not failed to maintain that status when he filed the instant adjustment application in April 2017. Consequently, he is ineligible to adjust his status under Section 13 on that basis alone.

B. Compelling Reasons

A Section 13 applicant must also 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 they are 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.³ 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).

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 and consistently 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 their 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 category for all former A or G nonimmigrants who may face difficulties or disruptions upon returning to their countries of accreditation.

The record reflects that the Applicant was appointed to a position of a [redacted] at the Sri Lankan embassy in Washington, D.C. in September 2014, when [redacted] served as the [redacted]

³ 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).

[redacted] During his 2019 interview with a USCIS officer the Applicant testified that the government changed in 2015,⁴ and that he feared returning to Sri Lanka because military officers like him were arrested and he might also be imprisoned because he previously worked for the former [redacted]. When specifically asked whether he feared retaliation based on his prior employment with the [redacted] in Sri Lanka, or due to his work in the United States as a diplomat, the Applicant clarified that it was because he worked in Sri Lanka as a security officer for the former [redacted].

The Director determined that the Applicant did not provide evidence to support his claims that he was employed as a security officer for the former [redacted] and that because of this employment he would be sent to jail “as political revenge” upon return to Sri Lanka. The Director further found that the reasons the Applicant provided for not being able to return to Sri Lanka were not “compelling” in the context of Section 13 adjustment, because he did not present evidence that he or his family members would be targeted by that country’s government, or that he would be at risk of harm because of his past government employment, political activities, or other related reasons.

On appeal, the Applicant submits a personal statement, a 2014 letter from the embassy of Sri Lanka confirming his assignment at the embassy for a period of four years, a copy of his A-1 visa issued in July 2016, evidence of his salary at the embassy as of January 2017, and two online articles published in 2017 by Sri Lankan media outlets.

In his statement, the Applicant explains that in 2007 he was appointed as the personal bodyguard and chief security coordinator for the former [redacted] and that his primary duty was to safeguard [redacted] and his family members from any terrorist attacks. He states that he was a decorated brigadier in the Sri Lankan army when he was appointed to his post as the [redacted]. The Applicant states that in 2015, while he was employed at the Sri Lankan embassy in the United States, the new Sri Lankan government came to power and started targeting military personnel; it also formed the Financial Crimes Investigation Division (FCID) to investigate financial crimes committed by the former Rajapaksa government. The Applicant states that the new government denied his promotions without following proper military procedure, and that “a good cross section of the entire military high command . . . has either been investigated, questioned, or remanded over some criminal investigation or the other,” as part of politically motivated reprisals. The Applicant states that during this time two high ranking officers from FCID visited the embassy and, after he refused to be questioned, informed him that he would be summoned to testify once he returned to Sri Lanka. The Applicant states that two of his colleagues from the military informed him that they were questioned by FCID for hours, that most of the questions were about him and his connection to the former [redacted] and that their goal was to arrest him and to use that against [redacted].

The Applicant claims that he did not want to be the political target of the Sri Lankan government in power at the time and, because he knew he would be arrested upon return, decided to remain in the United States with his family. He explains that for this reason he is considered a traitor and, as the Sri Lankan media describe him as a war criminal hiding in the United States, his former subordinates now despise him and will testify against him if he returns to Sri Lanka. One of the online articles the

⁴ We note that presidential elections were held in Sri Lanka in January 2015. The incumbent president Mahinda Rajapaksa was defeated, and Maithripala Sirisena was elected as the new president. *See 2015 Sri Lankan presidential election*, https://en.wikipedia.org/wiki/2015_Sri_Lankan_presidential_election. [redacted]

[redacted] in the 2015 presidential election.

Applicant submits on appeal indicates that he “has gone missing” and the “[a]rmy has now declared him a deserter”; the second article indicates that “no action whatsoever was taken by [president] Sirisena to repatriate the army officers who had been sent by Rajapaksas to various embassies in return for their assistance in crimes committed on behalf of Rajapaksas,” and although it was a serious problem for the government that an officer who was sent to the United States as a diplomat escaped from the army, “they have not taken serious actions in this regard.”⁵

We acknowledge the Applicant’s statements and additional evidence on appeal, but conclude that the record remains insufficient to establish the requisite compelling reasons for his claimed inability to return to Sri Lanka. Although the Applicant indicates that in 2015, when he was working at the embassy a new government came to power in Sri Lanka, he has not explained how this change was so fundamental that it rendered him homeless or stateless because of his prior diplomatic status and his activities as the [REDACTED]. Rather, the Applicant indicates that he is not willing to return to Sri Lanka because he fears he might be investigated for his activities during the civil war on behalf of the Rajapaksa government before his 2014 appointment at the embassy. Moreover, the evidence does not support the Applicant’s testimony that he was targeted by the new Sri Lankan government elected in January 2015. Specifically, the record shows that in June 2016 the government of Sri Lanka requested the U.S. Department of State to extend the Applicant’s A-1 status in the United States through December 2017; and the Applicant was issued another A-1 visa in July 2016. The Applicant’s salary notice, in turn, shows that he continued to be employed at the embassy and represent the new Sri Lankan government in the United States as of January 2017. We recognize the Applicant’s claims that he may be subject to an investigation by the current Sri Lankan government for his role in that country’s civil war and desertion from the army. Those claims, however, do not rise to the “fundamental political change that has, in essence, rendered an applicant homeless or stateless” standard for compelling reasons.

As stated, to demonstrate that such compelling reasons exist, the Applicant must show that there was a fundamental political change in Sri Lanka, *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 these requirements, because he has not shown that while he held A-1 nonimmigrant status from 2014 to August 2017 a fundamental political change occurred in Sri Lanka, which left him in effect homeless or stateless because of his prior government employment as a [REDACTED] at the Sri Lankan embassy in the United States.

III. CONCLUSION

The Applicant is ineligible to adjust status under Section 13 on two separate bases, as he has not shown that he failed to maintain his A-1 status before filing the instant application, and he also has not demonstrated that there are compelling reasons that prevent his return to Sri Lanka. 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.⁶

⁵ We note that Gotabaya Rajapaksa was elected president in 2019. [REDACTED]

⁶ See *I.N.S. v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.”).

ORDER: The appeal is dismissed.