



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

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

In Re: 25825336

Date: MAY 3, 2023

Appeal of National Benefits Center Decision

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

The Applicant, a citizen 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 her return to Sri Lanka. The matter is now before us on appeal.

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

The only issue on appeal is whether the Applicant established the existence of compelling reasons that render her unable to return to Sri Lanka.

The record reflects that the Applicant was admitted to the United States in 2016 as an A-2 nonimmigrant to work at the [REDACTED] (consulate) as a [REDACTED] (accounts officer). In 2019, she took over the duties of the former attaché, and her initial three-year appointment at the consulate was extended through November 2020. In May 2021 after the Applicant's employment ended and the U.S. Department of State terminated her A-2 nonimmigrant status, the Applicant filed the instant request for adjustment of status under Section 13.

As stated, a Section 13 applicant must establish among other requirements “[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 noncitizen 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 their 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 noncitizen to show compelling reasons demonstrating an inability to return to the country of accreditation. 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). . . .

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).

(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, 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, returning to that country has become impossible because of the applicant’s 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 of category for all former A or G nonimmigrants who may face difficulties or disruptions upon returning to their countries of accreditation.

In her personal declaration submitted with the Form I-485, and in a sworn statement before a U.S. Citizenship and Immigration Services’ (USCIS) officer, the Applicant testified that she was appointed to work at the consulate after former Sri Lankan president, Mahinda Rajapaksa was defeated in 2015 presidential elections, and a new government was formed. She stated that in 2017 the new government established a Financial Criminal Investigation Division (FCID) and started an investigation into the financial activities and misuse of funds at the consulate during the period when Mahinda Rajapaksa was in power. The Applicant related that as an accounts officer she prepared financial reports for review by FCID officers who came to the consulate. She further stated that in February 2019 the consulate received a complaint against her alleging misuse of public funds, which was then forwarded to the Finance Ministry in Sri Lanka. The Applicant explained that in November 2019 the former president, Mahinda Rajapaksa, became the Sri Lankan prime minister (after being appointed by his brother, Gotabaya Rajapaksa, who won the 2019 Sri Lankan presidential election), and that she was afraid she would be arrested upon return to Sri Lanka because Rajapaksa was retaliating against all “officers who went against him in the 2016-2019 period.” She stated that there was an open investigation against her even though the consul general notified the foreign relations secretary in Sri Lanka that the 2019 complaint was baseless and that she performed her duties according to the country’s financial regulations. A copy of the February 2020 letter from the Sri Lankan consul general to the foreign relations secretary is included in the record, and confirms that the Applicant “has followed all financial regulations and circulars . . . with regard to payment of salary arrears to . . .

staff,” that the complaint was not signed, and that the individual who filed it was not a staff member at the consulate.

The Director determined that the reasons for the Applicant’s claimed inability to return to Sri Lanka were not “compelling” in the context of Section 13 adjustment, as she did not establish why she or her immediate family members would be targeted by the government of Sri Lanka, or that she was at risk of harm because of her past government employment, political activities, or other related reasons.

On appeal, the Applicant reiterates that after Gotabaya Rajapaksa became the president of Sri Lanka in 2019, an investigation against her was opened and remains pending. She states generally that during the Rajapaksa rule human rights were violated in Sri Lanka and, while Rajapaksa family supporters were granted prestigious government positions, those who revealed his corruption were either assassinated or disappeared without a trace. She states that although she requested an early retirement from the government service when her assignment at the consulate ended in 2021, the Foreign Ministry instructed her to return to Sri Lanka. She claims that this clearly shows that the Foreign Ministry wants her back in the country so that the Rajapaksa regime can take revenge against her and her family. In support, the Applicant references a previously submitted article on the 2009 assassination of a high-profile Sri Lankan journalist, as well as articles and social media posts critical of Gotabaya Rajapaksa his son, and Mahinda Rajapaksa who were investigated for corruption and waste of public funds in 2016.

We acknowledge the Applicant’s statements. However, the record remains insufficient to establish the requisite compelling reasons that prevent her from returning to her home country. Although the Applicant indicates that the new government came into power in 2019 when she was working at the consulate, she has not explained how this change was so fundamental that it rendered her homeless or stateless. Rather, the record reflects that in 2019 the Sri Lankan government requested the U.S. Department of State to extend the Applicant’s A-2 nonimmigrant visa, and her employment at the consulate continued well after the new government was elected in November 2019 despite the complaint against her filed months earlier. We acknowledge the Applicant’s claims that the Sri Lankan government may retaliate against her for providing the requested documentation to FCID as part of her regular job duties. 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. Lastly, we note that while the Applicant indicated she was threatened⁴ and feared for the safety of her immediate family members, she testified that her spouse subsequently traveled to Sri Lanka in January 2021 for three weeks and returned to the United States without incident as a A-2 nonimmigrant.

As discussed, the Applicant must establish that there was a fundamental political change in Sri Lanka, *and* that her inability to return there as a result of that fundamental political change relates to the diplomatic or semi-diplomatic duties she performed on behalf of the government that accredited her. The Applicant has not demonstrated that she meets those requirements, because she has not shown that while she held A-2 nonimmigrant status from 2016 through 2021 a fundamental political change occurred in Sri Lanka, which left her in effect homeless or stateless because of her prior government employment as an accounts manager and attaché at the Sri Lankan consulate in the United States.

⁴ The Applicant did not explain who specifically threatened her.

III. CONCLUSION

The Applicant is ineligible to adjust status under Section 13, because she has not shown that there are compelling reasons preventing her 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.⁵

ORDER: The appeal is dismissed.

⁵ Instead, we reserve those issues. 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.”).