



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

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

In Re: 27923457

Date: NOV. 2, 2023

Appeal of National Benefits Center Decision

Form I-485, Application to Register Permanent Residence or Adjust Status (Section 13 Diplomat)

The Applicant is a citizen of Cote d'Ivoire who seeks to adjust status to that of a lawful permanent resident 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 that there were compelling reasons preventing her return to Cote d'Ivoire, as required under Section 13. On appeal, the Applicant submits additional documentation and asserts that she has established compelling reasons that she is unable to return to Cote d'Ivoire.

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, as explained below, we will remand the matter to the Director for the entry of a new decision.

Section 13 provides that a noncitizen, along with immediate family members, who was admitted to the United States as an A-1, A-2, G-1, or G-2 nonimmigrant, and who has failed to maintain that status, may apply for adjustment of status. 18 U.S.C. § 1255b(a), 8 C.F.R. § 245.3. An applicant must show compelling reasons why the applicant (or a member of the applicant's immediate family) is unable to return to the country represented by the government which accredited the applicant (or a member of the applicant's immediate family), and that adjustment of status would be in the national interest. 18 U.S.C. § 1255b(b). An applicant must further demonstrate that adjustment of status would not be contrary to the national welfare, safety, or security of the United States, and that the applicant is a person of good moral character and admissible to the United States. *Id.*

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 <https://travel.state.gov>.

The Applicant, who was last admitted to the United States as an A-2 nonimmigrant in February 2011, is seeking to adjust status under Section 13 as the immediate relative of a diplomat or foreign government official. The record indicates that the Applicant's spouse was employed as [REDACTED] at the Embassy of Cote d'Ivoire in the United States. The Director determined that the Applicant did not establish she was eligible for adjustment of status under Section 13 because she did not establish compelling reasons preventing her return to Cote d'Ivoire. Therefore, the issue on appeal is whether the Applicant has established compelling reasons preventing her return to Cote d'Ivoire. After considering the record in its entirety, we find that the matter should be remanded to the Director for the entry of a new decision.

A Section 13 applicant must show “[c]ompelling 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 (emphasis added)” 8 U.S.C. § 1255b(b). However, 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 he or she is a person of good moral character and admissible to the United States, and that adjusting the noncitizen’s status would not be contrary to the national welfare, safety, or security of the United States. The statute did not, however, contain explicit language requiring a noncitizen 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, 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 his or her prior A or G nonimmigrant status and that the applicant has thus been rendered homeless or stateless.

The Applicant asserts that she is unable to return to Cote d’Ivoire because she fears for her and her family’s safety. She explains that in June 2004, her spouse worked in the military for an individual, a colonel, who asked him to join him in a rebellion against the president of Cote d’Ivoire at that time. The Applicant’s spouse chose to not join the rebellion and as a result, the individual went after her spouse by not paying his salary and “staining the image” of her spouse. When the president at the time learned that the individual was misrepresenting the Applicant’s spouse, he was promoted to [redacted] [redacted] and the individual “went back to Ivory Coast to join [the] rebellion” against the president.

In his own declarations, the Applicant’s spouse states that he and his family have been threatened by the individual who asked him to join in a rebellion against the president of Cote d’Ivoire at the time and continue to be fearful because said individual is presently working with the government of Cote d’Ivoire as a member of Parliament. He contends that his father was tortured in 2005 because he was in the United States helping the president of Cote d’Ivoire by working at the embassy. He also maintains that his brother was arrested for 72 hours because they thought he was him. The Applicant’s spouse further explains that after leaving the United States in 2011, he has lived in multiple countries, including Ghana and Nairobi, as he is not presently able to return to Cote d’Ivoire because he fears for his and his family’s safety. He maintains that some of the refugees who returned to Cote d’Ivoire in [redacted] 2021 were arrested, many former soldiers who were arrested in 2011 in Cote d’Ivoire are being held in prison without a trial, and individuals who relocated to Ghana “stand to face the same treatment on their return to” Cote d’Ivoire. The record also contains a support letter from the Applicant’s brother-in-law. He contends that the individual referenced by the Applicant and her spouse “is expecting the return of my brother [the Applicant] and his family to revenge himself.” The record also establishes that the Applicant’s spouse was recalled from his position as [redacted] at the Embassy of Cote d’Ivoire in the United States in August 2011.

On appeal, the Applicant submits additional letters in support of her contention that she would be in danger were she to return to Cote d’Ivoire as a result of her spouse’s past work for the Embassy of Cote d’Ivoire. An individual who is friend with the Applicant’s spouse explains that they met in 2012 in Ghana, when news was spreading “about the ‘hunting down’ of Ivorian military personnel and civilians who were close associates of the former Ivorian President.” Individuals were being secretly arrested and those who resisted were murdered or forcefully escorted back to Cote d’Ivoire to face the new government. Some were never heard of again. The individual further contends that because the Applicant’s spouse feared for his life, the individual and his wife decided to accommodate him in their home in Ghana. Due to fears for the Applicant’s spouse’s safety, he was moved to another home nine months later. The individual details that there were “mysterious deaths of personal friends and acquaintances of Ivorian origin and associates of” the former president of Cote d’Ivoire. Due to

continued security concerns, the Applicant's spouse moved from Ghana to Guinea and then to Togo, back to Ghana, and is now residing in Kenya. The individual confirms that it is not advisable for the Applicant's spouse and his family to return to Cote d'Ivoire where he is wanted. Additional letters submitted on appeal, including an updated affidavit from the Applicant's spouse, echo the concerns regarding the Applicant and her family's safety were they to return to Cote d'Ivoire. The Applicant has also submitted numerous articles detailing the political conditions in Cote d'Ivoire and providing additional insight on why she and her family are unable to return to Cote d'Ivoire.

Considering the documentation submitted on appeal, we find it appropriate to remand the matter for the Director to reevaluate the record in its entirety to determine whether the Applicant has established compelling reasons for why she is unable to return to Cote d'Ivoire. In addition, the Director should review the record and determine if the Applicant has shown that her spouse performed diplomatic or semi-diplomatic duties and otherwise meets the remaining criteria for adjustment of status under Section 13.²

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

² The regulations provide that adjustment of status under Section 13 is limited to those noncitizens who performed diplomatic or semi-diplomatic duties and to their immediate families, and that a noncitizen whose duties were of a custodial, clerical, or menial nature, and members of his or her immediate family, are not eligible for adjustment. 8 C.F.R. § 245.3. During her adjustment interview before a U.S. Citizenship and Immigration Services (USCIS) immigration officer the Applicant testified that her spouse was employed as [redacted] at the Embassy of Cote d'Ivoire in the United States and that his duties were to [redacted]. In his own declaration, the Applicant's spouse asserts that in addition to his role as [redacted] he was also [redacted]. He maintains that his duties in that role included [redacted].