



AB

U.S. Department of Justice  
Immigration and Naturalization Service

ident... deleted to  
prevent clearly unwarranted  
invasion of personal privacy



OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

FILE: [REDACTED]  
EAC 01 212 53425

Office: Baltimore

Date: SEP 26 2002

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957

IN BEHALF OF APPLICANT:



PUBLIC COPY  
PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Baltimore, Maryland, and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica who is seeking to adjust her status to that of a lawful permanent resident pursuant to section 13 of the Act of September 11, 1957, as the wife of an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(A)(ii).

The district director denied the application for adjustment of status after determining that the applicant's husband, who is the principal alien, was ineligible for the benefit sought because the position occupied by the principal alien was clerical in nature.

On appeal, counsel asserts that the decision of the director is not correct on the law or facts. He states that the applicant's application is derivative based on her husband's application; however, the application of her husband was illegally denied.

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.

Additionally, 8 C.F.R. 245.3 provides, in pertinent part:

The benefits under section 13 are 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 Immigration and Nationality 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 which 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.**

(Emphasis added.) The record shows that the applicant's husband (principal alien) was last admitted to the United States on January 29, 2001, as an A-2 nonimmigrant employee of the Embassy of Jamaica in Washington, D.C. The principal alien held the position of clerk until April 9, 2001. The principal alien and the applicant filed their applications for permanent residence under section 13 of the Act on April 16, 2001.

The Associate Commissioner, after reviewing the record of proceeding, concurred with the finding of the district director that the position or duty occupied by the principal alien at the Embassy of Jamaica was clerical in nature and, therefore, he had not met the requirement as provided in 8 C.F.R. 245.3 that an applicant must have performed diplomatic or semi-diplomatic duties. The application of the principal alien was consequently denied by the district director and the Associate Commissioner dismissed a subsequently filed appeal.

Matter of Aiyer, 18 I&N Dec. 98 (Reg. Comm. 1981), held that since the dependent of a principal alien derives benefits from the principal alien, an applicant for adjustment of status under section 13 of the Act of September 11, 1957 is ineligible for such benefits if he/she is the dependent of a principal alien ineligible for such benefits.

The applicant is, therefore, ineligible for the benefits of section 13 of the Act since the principal alien has been found ineligible for these benefits. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.