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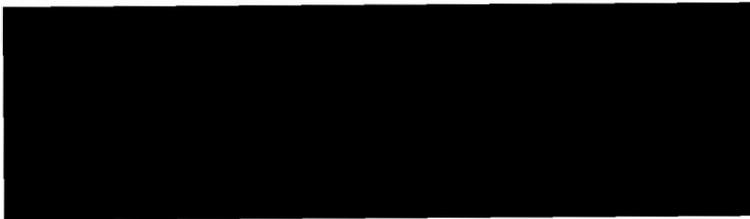
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FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: DEC 15

IN RE: Petitioner: [REDACTED]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Washington, D.C. denied the Form I-485, Application for Permanent Residence, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen. The motion will be granted. The AAO's previous decision will be affirmed.

The applicant is a native and citizen of The Philippines who is seeking to adjust his status to that of a lawful permanent resident under section 13 of the Immigration and Nationality Act (the Act) of 1957, Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Act.

The AAO previously dismissed the applicant's appeal, determining that the applicant had failed to demonstrate he was unable to return to the Philippines and that his adjustment would serve U.S. interests.

The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen "must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." On motion, counsel for the applicant submits media articles, letters, statements and intelligence reporting to establish the applicant's eligibility for adjustment under section 13 of the Act of 1957. The motion will be granted. The AAO will reopen this proceeding to consider the new evidence counsel presents.

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.

Pursuant to 8 C.F.R. § 245.3, eligibility for adjustment of status under section 13 of the 1957 Act 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 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.

The AAO now turns to a review of the record. In making a determination of statutory eligibility, Citizenship and Immigration Services (CIS) is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The record establishes the applicant's eligibility for consideration under section 13 of the 1957 Act. The applicant was admitted to the United States on March 5, 1986 pursuant to section 101(a)(15)(A)(i), 8 U.S.C. § 1101(a)(15)(A)(i). On November 13, 1986, the Department of State certified that the applicant's name had been deleted by the Philippine Embassy from its White List, but that no official termination notice had been received. Therefore, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(i) of the Act and no longer had that status at the time of his application for adjustment on June 23, 1986.¹

As a result, the only issue before the AAO is whether the record also establishes that the applicant, at the time of the director's July 7, 1998 decision, had compelling reasons that precluded his return to The Philippines and that his adjustment would have served U.S. national interests – the requirements of section 13(b) of the 1957 Act.

Counsel contends that the AAO erroneously concluded that the evidence provided by the applicant did not establish that he would be at risk if he returned to The Philippines. He further asserts that granting lawful permanent resident status to the applicant would be in the national interest of the United States as it would “comply with established principles of international law, in particular the principle of ‘nonrefoulement,’ to which the United States is bound both by treaty and as a matter of customary international law.” Counsel also points to the applicant's continuing assistance to high-ranking members of the Armed Forces of the Philippines, as being in the U.S. national interest.

On motion, counsel submits copies of April-May 2000 news articles related to threats made against Americans in The Philippines by a “Muslim rebel group,” tourists held hostage by the Abu Sayaf organization in The Philippines, and the April 2000 assassination by Communist New People's Army (NPA) rebels of former Army Major Leodegario Adalem, held responsible for the 1980 killing of a Philippine tribal chief; 1998 Philippine intelligence reports indicating that individuals who served in the Presidential Security Command under former President Ferdinand Marcos remain at risk; a May 25, 1999 letter of appreciation sent to the applicant by Major General Felix V. Duenas, Jr. for his support of Philippine military staff attending the RP-US Bilateral Seminar Wargame in Hawaii; statements made in 2000 by Hercules G. Cataluna, the Director of Intelligence, Philippine National Police and Ramon M. Azurin, a former aide de camp of former President Ferdinand Marcos, which indicate that the applicant would be targeted by his former adversaries if he returned to The Philippines; a

¹ Although the Form I-88 certified by the Department of State does not indicate when the applicant's diplomatic status was terminated, the AAO finds it sufficient to meet the requirements of section 13(a) of the Act of 1957. Termination of recognition of an A or G visa holder's status is committed to the discretion of the Department of State. 22 C.F.R. § 41.22(f).

November 2000 letter from General Angelo T. Reyes, the Chief of Staff of the Armed Forces of the Philippines thanking the applicant for his hospitality to Philippine military personnel in Hawaii; and letters from the applicant's sister in The Philippines discussing the continuing threats against him. Counsel contends that this evidence establishes that, at the time of the director's decision, the applicant would have been in danger if he had returned to The Philippines.

Previously, on appeal, counsel indicated that the applicant was a member of the intelligence unit of the Presidential Security Command whose duties included the identification, apprehension and neutralization of subversive elements that "endangered the security of the Philippines President" and that "he was instrumental in curtailing many of the operations of both the NPA and MNLF [Moro National Liberation Front] in the Metro Manila area," information supported by the materials submitted on motion. Counsel also reported that the applicant had worked closely with the Military and Intelligence Support Group (MISG) of the metropolitan command of Manila's Philippine Constabulary, then headed by Colonel Rolando Abadilla, and that Abadilla was assassinated in 1996 by an NPA splinter group based on this previous affiliation.

Based on the evidence submitted with the motion to reopen, the AAO finds the applicant to have established that his return to The Philippines in 1998 would have been potentially dangerous for him. The applicant has demonstrated that individuals who served as operatives of the Presidential Security Commission and who participated in actions against the NPA under the Marcos government continued to be targets of NPA retaliation 12 years after Ferdinand Marcos left office. Therefore the AAO finds the applicant to have shown that compelling reasons prevented his return to The Philippines in 1998, thus satisfying the requirements of the first prong of section 13(b) of the Act of 1957.

With regard to the second prong of section 13(b) of the 1957 Act – the adjustment of the alien would serve the national interest – counsel on motion contends that the adjustment of the applicant, who believes he is a refugee, would support the principle of nonrefoulement and, thereby, serve U.S. national interests. However, as previously noted by the AAO, the applicant does not hold the status of an asylee, an individual who applied for and was granted refugee protection while in the United States. Neither is the principle of nonrefoulement relevant to the applicant's application for adjustment of status. U.S. obligations as a signatory to the 1967 Protocol relating to the Status of Refugees are satisfied by the language of section 241(b)(3) of the Immigration and Nationality Act, which prevents the removal from the United States of persons to countries where their life or freedom would be threatened because of race, religion, nationality, membership in a particular social group or political opinion. Accordingly, counsel's assertion that the adjustment of the applicant would support the principle of nonrefoulement and serve U.S. national interests is not persuasive.

Counsel also notes that the applicant still holds his status as an army colonel and that he continues to serve and assist high-ranking members of the Philippine armed forces. He contends that the applicant's activities in this regard are in the interests of the United States as they facilitate contacts between high-ranking U.S. and Philippine military officers. In support of his statements, counsel submits a copy of a May 25, 1999 letter to the applicant from a Major General Felix V. Duenas, Jr., the Deputy Chief of Staff for Plans at the General Headquarters, Armed Forces of The Philippines. He also provides a November 2, 2000 letter from General Angelo T. Reyes, Chief of Staff, Armed Forces of The Philippines. However, neither letter supports counsel's statements regarding the applicant's facilitation of high-level contacts between the U.S. and Philippine militaries. General Duenas'

letter thanks the applicant for his hospitality and the support provided to the members of Philippine delegation who participated in a 1999 bilateral war game in Hawaii. General Reyes indicates his gratitude for the applicant's hospitality to members of the Philippine armed forces in Hawaii. Accordingly, these letters do not establish that the applicant's retention of military rank or contacts serve U.S. national interests.

For the reasons already discussed, the AAO finds that the new evidence submitted on motion by the applicant has established that, at the time of the director's adjudication of his application, compelling reasons prevented his return to The Philippines. He has not, however, demonstrated that his adjustment to lawful permanent resident status would have benefited U.S. national interests.

Pursuant to section 291 of the Act, 8 U.S.C. 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. The applicant failed to meet that burden. Accordingly, the AAO will affirm its prior decision.

ORDER: The AAO's prior decision is affirmed. The application is denied.