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

A3

[Redacted]

FILE: [Redacted] Office: WASHINGTON DISTRICT Date: **JAN 08 2008**

IN RE: Applicant: [Redacted]

APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

ON BEHALF OF APPLICANT:

[Redacted]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Washington, D.C. and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who is seeking to adjust his status to that of lawful permanent resident under section 13 of the Act of 1957 ("Section 13"), Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, 8 U.S.C. § 1255b, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(ii) of the Immigration and Nationality 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 had failed to demonstrate that compelling reasons prevent his return to the Philippines or that his adjustment would serve U.S. national interest. *Decision of District Director* dated February 3, 1999. In particular, the district director concluded that reasons given by the applicant for not being able to return to the Philippines related to conditions under the former regime of the late Ferdinand Marcos and were no longer valid. *Id.* at 2.

The applicant's wife ([REDACTED]) and children [REDACTED] ; and [REDACTED] each submitted an Application for Status as Permanent Resident (Form I-485) seeking to adjust status under Section 13. The district director issued separate decisions denying these applications. In the Form I-290B Notice of Appeal filed on behalf of the applicant, counsel states that he is also appealing those decisions. However, no Form I-290B, with accompanying fee, has been filed on behalf of either the applicant's wife or his children as required. Consequently, the only matter before the AAO is the denial of the applicant's application to adjust status.

On appeal, counsel summarizes the evidence submitted by the applicant and contends that this evidence establishes that there are compelling reasons why the applicant and his family are unable to return to the Philippines and why their adjustment to permanent resident status is in the national interest. *Memorandum in Support of Notice of Appeal and Motion For Reconsideration* dated March 1, 1999, at 1-16. Counsel asserts that that the applicant and each member of his family have made "substantial beneficial contributions" to the United States. *Id.* at 16. Counsel observes that the applicant and his wife have been employed in teaching children and have participated in meaningful volunteer activities resulting in "substantial benefit to employers and to the community." *Id.* at 16-17. Counsel also notes that the applicant's children are employed and held in high esteem by employers, co-workers and others. *Id.* at 17. Counsel contends that there is a substantial risk that the applicant and his family will be victimized by the criminal element in the Philippines. *Id.* He asserts that the applicant's wife and child [REDACTED] suffer from medical conditions that will be severely exacerbated if they return there. *Id.* He notes that the applicant and his family have been in United States since 1976, and contends that they will thus be outcasts in the Philippines with "virtually no hope" of finding meaningful employment or adequate housing. *Id.* at 18.

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.

8 U.S.C. § 1255(b).

Pursuant to 8 C.F.R. § 245.3, eligibility for adjustment of status under Section 13 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 that 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 legislative history for Section 13 reveals that the provision was intended to provide adjustment of status for a "limited class of . . . worthy persons . . . left homeless and stateless" as a consequence of "Communist and other uprisings, aggression, or invasion" that have "in some cases . . . wiped out" their governments. Statement of Senator John F. Kennedy, *Analysis of Bill to Amend the Immigration Nationality Act*, 85th Cong., 103 Cong. Rec. 14660 (August 14, 1957). The phrase "compelling reasons" was added to Section 13 in 1981 after Congress "considered 74 such cases and rejected all but 4 of them for failure to satisfy the criteria clearly established by the legislative history of the 1957 law." H. R. Rep. 97-264 at 33 (October 2, 1981).

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

A review of the record establishes the applicant's eligibility for consideration under Section 13. The applicant was admitted in A-2 status at Honolulu, Hawaii on January 20, 1979 and served thereafter at the Philippines Consulate as a "Revenue Representative." *Letter from [REDACTED] Chief of Diplomatic Liaison Division, Visa Office, Department of State*, dated December 10, 1998. The State Department was unable to locate the applicant's record of registration and to provide the date the applicant's status was terminated. According to information in the record, the applicant resigned his position on July 13, 1981. Therefore, the AAO concurs with the district director that, per the requirements of Section 13, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(ii) of the Act but no longer held that status at the time of his application for adjustment on July 22, 1981.

As a result, the only issue before the AAO is whether the record also establishes that compelling reasons prevent the applicant's return to the Philippines and that his adjustment will serve U.S. national interests.

In his declaration, the applicant asserts that he is unable to return to the Philippines for the following reasons:

1. As a prosecutor in the Philippines, he obtained convictions against tax violators that included individuals related to members of the administration of [REDACTED]
2. The heat, humidity and environmental pollution in the Philippines will cause him substantial physical difficulties.
3. He and his family have no friends or acquaintances in the Philippines.
4. Given the applicant's advanced age, it is "impossible" for him to live again in the Philippines.
5. The applicant's wife has an asthmatic condition for which medication is not available in the Philippines that will be greatly aggravated by environmental conditions there.
6. The applicant's children have been raised in the United States and will experience tremendous hardship adjusting to life in a foreign culture and obtaining meaningful employment in the Philippines.

As discussed above, the legislative history of Section 13 shows that Congress intended that "compelling reasons" relate to political changes that render diplomats and foreign representatives "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which accredited them. The general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. As the district director observed in the decision, the authoritarian regime of Ferdinand Marcos that controlled the Philippines when the applicant first came to the United States was deposed long ago. The applicant has failed to demonstrate that the government of the Philippines will not allow his return to that country, or that his past employment as a prosecutor or consular official places him and his family in danger and renders them unable to return to the Philippines. The AAO recognizes that the applicant and his family have made contributions to American society. However, the applicant has failed to demonstrate that he or any member of his immediate family have compelling reasons as contemplated under Section 13 that prevent them from returning to the Philippines.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. He has failed to establish that there are compelling reasons preventing his return to the Philippines. 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 has failed to meet that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.