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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: WASHINGTON, D.C.

Date: JUN 03 2008

IN RE:

Applicant:

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office 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 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 adjustment would be in the national interest. *Decision of Field Office Director*, dated February 11, 2008.

The applicant's wife [REDACTED] and stepchildren [REDACTED] each submitted a separate Application to Register Permanent Residence or Adjust Status (Form I-485) seeking to adjust status under Section 13 as the applicant's derivative family members. The director issued decisions denying these applications on the basis of the applicant's ineligibility for benefits under Section 13. Counsel has submitted a Form I-290B, with accompanying fee, appealing the decisions to deny the applications of the applicant, his spouse, and his stepson Algo. However, the record does not contain an appeal from the decision to deny the application of the applicant's stepson [REDACTED].

On appeal, counsel asserts that the applicant and his family members have established by a preponderance of the evidence compelling reasons why they are unable to return to the Philippines. *Counsel's Memorandum in Support of Notice of Appeal and Motion for Reconsideration* at 15. Counsel contends that the director violated regulations and USCIS policy in not issuing the applicant a request for further evidence or a notice of intent to deny prior to denying the applications to allow the applicant the opportunity to meet his burden of proof. *Id.* at 14. Counsel observes that there is no evidence of any consideration of the compelling factors as they relate to the applicant's spouse and stepson Algo, and the director also mistakenly indicated that the applicant had asserted a fear of the AMBOYS, when his actual assertion was that he is afraid of harm because he is an AMBOY. *Id.* Counsel asserts that the applicant will be "targeted and isolated from the job market because of his perceived ties to [former] President Estrada and his age." *Id.* at 15. Counsel contends that without any employment prospects, the applicant and his spouse will be forced to begin "a small livelihood project in a rural area" where they will face extortion and other potential harm from the terrorist New People's Army (NPA) because of the applicant's position in the United States. *Id.* at 15. Counsel also observes that the applicant could suffer medical complications if he returns to the Philippines. *Id.* at 15-16. He asserts that return to the Philippines would be psychologically detrimental to the applicant's spouse, who was abused by her ex-husband in the Philippines. *Id.* at 16. Likewise, counsel contends that return to the Philippines will be detrimental to the applicant's stepchildren, who have spent a large portion of their lives in the United States and have become acculturated. *Id.* Finally, counsel asserts that the applicant and his family members have made contributions to the United States that demonstrate that the national interest would be served by granting them adjustment to lawful permanent resident status. *Id.* at 16-17. Counsel has submitted numerous documents in support of the appeal. All of the evidence in the record has been considered in rendering a decision on the appeal.

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 last admitted in A-2 status on April 30, 2002 and served as a Special Trade Representative at the Consulate

General of the Philippines in San Francisco, California and the Director of the Philippine Travel and Investment Center in Seattle, Washington until he was recalled on or around June 30, 2002. *See Memorandum Order of Dr. [REDACTED] Undersecretary of International Trade, Department of Trade & Industry for the Philippines, dated February 23, 2002; Letter from [REDACTED] Consul General, Consulate General of the Philippines, San Francisco, California, dated August 28, 2002; Form I-566, Interagency Record of Request.* Therefore, per the requirements of Section 13, the applicant was admitted to the United States in diplomatic or semi-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 September 23, 2002.

However, the applicant has failed to establish compelling reasons that prevent his and his family's return to the Philippines. The AAO acknowledges that the applicant was a former classmate of and may be perceived to have ties to former President Estrada of the Philippines, but the applicant has not demonstrated that he will suffer adverse treatment as a consequence. The applicant has not submitted evidence showing that similarly situated individuals have experienced the kind of discrimination or reprisals he fears. In an affidavit submitted on appeal, the applicant states that he suspects that the closure of the Seattle, Washington office in which he worked and his recall to the Philippines one year prior to the end of the normal four-year tour of duty was motivated by his perceived ties to former President Estrada. However, the record lacks independent evidence substantiating the applicant's suspicions. Also, the evidence that the applicant and his spouse will have inadequate income and no employment prospects in the Philippines, and will thus be forced to operate "a small livelihood project in a rural area" where they will face extortion and other potential harm from the NPA consists of the unsupported assertions of the applicant and his spouse. Going on record without supporting documentary evidence is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Likewise, without documentary evidence to support a claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO acknowledges the evidence of violence and extortion committed by the NPA and other communist insurgents against "political figures, military and political officers, and civilians including suspected military and police informers," but concludes that this evidence does not show that the NPA will target the applicant or his family directly or indirectly because of his past employment with the Philippine government. *See Country Reports on Human Rights Practices, Philippines, Bureau of Democracy, Human Rights, and Labor, United States Department of State, March 11, 2008.* It is also noted that the State Department has objected to the applicant being granted adjustment of status and indicated that it does not believe that compelling reasons prevent the applicant's return to the Philippines. *See Interagency Record of Request (Form I-566).*

The applicant's other stated reasons for not returning to Philippines are not compelling reasons under Section 13. 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. The AAO acknowledges the contributions made by the applicant and his family to the

United States, but concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return 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 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.