

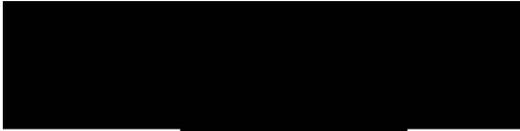
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U.S. Citizenship  
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FILE:



Office: WASHINGTON DISTRICT

Date:

**JUN 05 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Washington, D.C. and was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed on the basis that the applicant failed to demonstrate that compelling reasons prevent his return to the Philippines. The applicant filed a motion to reopen. The AAO determined that the applicant had shown in the motion that he is unable to return to the Philippines because of compelling reasons, but affirmed its previous decision to dismiss on the basis that the applicant had not demonstrated that his adjustment to lawful permanent resident status is in the national interest. The matter is now before the AAO on a motion to reconsider. The motion 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(A)(i).

As stated above, the AAO affirmed its decision and dismissed the applicant's motion to reopen on the basis that even though the applicant demonstrated that he is unable to return to the Philippines because of compelling reasons, he failed to show that his adjustment to lawful permanent resident status is in the national interest. *Decision of the AAO*, dated December 15, 2006.

The regulation at 8 C.F.R. § 103.5(a)(3) provides that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In the present motion, counsel cites Article I of the 1967 Protocol Relating to the Status of Refugees, section 241(b)(3) of the Act, and *INS v. Aguirre-Aguirre*, 526 U.S. 415, 427 (1999), and contends that it is in the national interest of the United States to uphold its legal obligation against non-refoulement. Counsel asserts that having found that the applicant would face persecution in the Philippines, the AAO cannot consistently assert that his adjustment of status is not in the national interest. In a separate memorandum of law submitted in support of the motion, counsel also contends that AAO overlooked that the applicant, because of his background in the Philippine Intelligence Services, "could be invaluable in the United States' war on" terrorist organizations in the Philippines.

Counsel's arguments regarding refoulement were presented previously. In the prior decision (December 15, 2006), the AAO stated:

[T]he 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.

The AAO has not made a determination that the applicant meets the eligibility requirements for asylum or withholding of removal. The AAO's finding that there are compelling reasons that prevent the applicant's return to the Philippines is not equivalent to such a determination. Section 13 requires the applicant to demonstrate that his adjustment of status is in the national interest in addition to demonstrating that there are compelling reasons that prevent his return to the Philippines. The applicant has failed to do so. Counsel's assertion that the applicant "could" be an invaluable resource in the "war on terror" is mere speculation—there is no evidence in the record that the U.S. government has sought the applicant's assistance or will do so in the future. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

For the reasons already discussed, the AAO finds that the authority cited by counsel does not establish that the AAO's decision of December 15, 2006 was based on an incorrect application of law or Service policy or was incorrect based on the evidence of record at the time of that decision.

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 motion will be dismissed.

**ORDER:** The motion is dismissed.