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U.S. Citizenship  
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Services

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[Redacted]

FILE: [Redacted] Office: WASHINGTON DISTRICT Date: JUN 20 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.

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 District Director, Washington, D.C., and was appealed to the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The 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 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 the 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able to return to the Philippines related to conditions under the former regime of the late Ferdinand Marcos and were no longer valid.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 appealed the decision of the district director to the AAO. The AAO dismissed the appeal, concurring with the district director that the applicant had failed to demonstrate that compelling reasons prevent his return to the Philippines. *Decision of the AAO*, dated January 8, 2008.

On the present motion, counsel contends that the AAO decision is clearly erroneous because it "disregards facts probative of the compelling reasons manifesting that the applicants cannot return to the Philippines, and applies an erroneous standard of proof in evaluating evidence presented." *Form I-290B*, part 2. Counsel submits additional documentation to establish that there are compelling reasons why the applicant is unable to return to the Philippines and that adjustment of status would be in the national interest of the United States. This documentation includes:

1. A letter dated January 26, 2008 from [REDACTED]
2. A letter dated January 20, 2008 from [REDACTED]
3. A letter dated January 23, 2008 from [REDACTED]
4. An undated letter from [REDACTED]
5. A letter dated January 25, 2008 from [REDACTED]
6. A letter dated January 19, 2008 from [REDACTED]
7. A declaration from the applicant dated January 31, 2008 accompanied by a previously submitted declaration and other documents
8. A declaration from the applicant's spouse with attachments
9. Declarations of the applicant's children
10. The 2006 U.S. State Department Report on Human Rights Practice for the Philippines
11. A letter dated February 3, 2008 from [REDACTED], President of the Filipino Community of Seattle, Washington

The entire record has been reviewing in rendering a decision on the motion.

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. Counsel has asserted that the AAO applied an erroneous standard of proof, but has cited no legal authority contradicting that cited by the AAO to show that the AAO's decision was based on an incorrect application of law or Service policy. Counsel has submitted new evidence to establish that there are compelling reasons preventing the applicant's return to the Philippines, but has failed to demonstrate that the AAO's prior decision was incorrect based on the evidence of record at the time of the decision. Therefore, the AAO determines that the applicant has not met the requirements for a motion to reconsider.

The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. The present motion meets the requirements of 8 C.F.R. § 103.5(a)(2). However, the prior decision of the AAO will be affirmed for the reasons stated therein and below.

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 evidence submitted by counsel on the present motion fails to demonstrate that there are compelling reasons under Section 13 for the applicant’s inability to return to the Philippines. In his 2008 affidavit, the applicant indicates that he and his family have resided in the United States since 1976 and have become “completely Americanized.” The applicant asserts that the Philippines has lacked a stable government since President Ferdinand Marcos was deposed in 1986. The applicant contends that should he and his family return to the Philippines, they would be a target of communist insurgents or other groups opposing the government. He asserts that they would be discriminated against because they would be considered “part of the establishment” and “Americanized.” He contends that “it would be an impossibility for any member of our family to find safe housing, any kind of employment, or safety from serious physical injury.” The applicant states that he and his wife have medical conditions such as hypertension, hyperlipidemia and diabetes that require close monitoring by doctors. The applicant details the contributions he and his family members have made to their community and to the United States. In his 1999 affidavit, the applicant had indicated that from 1959 to 1976 he was a government prosecutor “in charge of applying, interpreting, and enforcing revenue laws in the Philippines.” He claimed that he obtained convictions against many tax violators, some of whom were related to members of the administration of former President Marcos. The affidavits of the applicant’s spouse and children, along with the letters from [REDACTED] and [REDACTED], attest to the contributions the applicant and his family have made to the United States and to their good character.

In his affidavit, [REDACTED] observes that the applicant and his family have become “estranged” from the Philippines after having lived in the United States for many years. He states that they “face the occasional risk of being preyed upon by unscrupulous con men who at time have not hesitated to kidnap, maim and even kill returning overseas Filipinos.” He asserts that the “political situation” in the Philippines prevents all “but the members of a small oligarchy that has long ruled the country” from benefiting from improvements in the economy there. He contends that the communist insurgency and history of military coups creates a sense of instability and insecurity in the Philippines that makes the applicant and his family “perfectly justified” in fearing to return there. [REDACTED] a medical practitioner, adds that the political conditions in the Philippines have resulted in the emigration of many health professionals, leaving the country with a shortage of medical practitioners, particularly in rural areas. [REDACTED] asserts that the Philippines “is still fraught with corruption” and that it would be very difficult for the applicant and his family to obtain employment there because of their inability to speak Tagalog and their unfamiliarity with Philippine ways. [REDACTED] indicates that she was the victim of an attempted kidnapping in the Philippines and fears for her safety there.

The 2006 report from the State Department indicates that “communist insurgents, mainly from the NPA, continued to kill political figures, military and police officers, and civilians, including suspected military and police informers.”

The applicant has not shown that his reasons for being unable to return to the Philippines are compelling reasons as that term was intended in 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 because of political upheavals in the country represented by the government which accredited them. The AAO acknowledges the evidence demonstrating that the applicant and his family would experience hardship if they return to the Philippines, but the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. As the AAO observed in its previous decision, the authoritarian regime of former President Ferdinand Marcos that controlled the Philippines when the applicant first came to the United States was deposed more than 20 years ago. The applicant has not demonstrated that he was subsequently removed from his diplomatic position because of his position in the Marcos government, or shown that there is any specific, current threat against his safety in the Philippines because of any association, real or perceived, with the Marcos regime. The applicant has not demonstrated 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 present danger beyond the general danger experienced by other civilians in the Philippines. Accordingly, the applicant has failed to demonstrate on the present motion 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 AAO’s previous decision is affirmed.

**ORDER:** The decision is affirmed.