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

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PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: WASHINGTON, D.C.

Date: **JUN 23 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, Newark, New Jersey and appealed to the Administrative Appeals Office (AAO). The decision was withdrawn and the matter was referred to the Washington District Office for a new decision. The Field Office Director, Washington, D.C., issued a decision denying the application and certified the decision for review to the AAO. The decision will be affirmed.

The applicant is a native and citizen of the Philippines who is seeking to adjust her 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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The field office director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent her return to the Philippines or that adjustment would be in the national interest. *Decision of Field Office Director*, dated January 24, 2008.

Counsel asserts that the decision is erroneous and submits that a "useful template would be analogous to the criteria used in cancellation of removal cases where exceptional and extreme hardship would result to the applicant's U.S. citizen spouse and children." *Brief of Respondent on Appeal*. Counsel observes that the applicant and her family own a home and have established substantial roots in the United States during the many years in which they have resided here. *Id.* Counsel contends that if the applicant returns to the Philippines, she will not be able to support her family because of age discrimination there. *Id.* Counsel further asserts that the applicant's children, four of whom are native to the United States, will suffer the hardship of relocating to a foreign country where they don't speak the native language and where they will not enjoy the same educational opportunities available in the United States. *Id.* Counsel contends that the fact that it has taken 14 years for the applicant to have her appeal decided, when considered cumulatively with the evidence of hardship to the applicant and her family should they relocate to the Philippines, warrants the favorable exercise of discretion. *Id.* Counsel has submitted numerous documents in support of his brief. All of the evidence in the record has been considered in rendering a decision.

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 G-1 status on January 12, 1994 and served as an Attache in the Philippine Permanent Mission to the United Nations until March 15, 1994. See *Memorandum, Diplomatic Liaison Unit, Visa Office, Department of State, Washington, D.C.* dated November 7, 1994; I-566, *Interagency Record of Individual Request for Change/Adjustment to, or from, A or G Status; Form I-94, Departure Record*. 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)(G)(i) of the Act but no longer held that status at the time of her application for adjustment on April 1, 1994.

The AAO acknowledges that the applicant and her family may experience financial and other hardship upon their return to the Philippines, but concludes that this hardship does not constitute 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. Counsel's contention that the AAO should apply the hardship standard relevant in cancellation of removal cases has no basis in law. 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 her family to the United States during their many years of residence here. The AAO concludes, however, that the

applicant has failed to meet her burden of proof in demonstrating that there are compelling reasons that prevent her return to the Philippines or that it would be in the national interest of the United States to grant her application. It is also noted that the State Department has objected to the applicant being granted adjustment of status on the basis that there are no threats to her in the Philippines that would constitute compelling reasons under Section 13. See *Memorandum, Diplomatic Liaison Unit, Visa Office, Department of State, Washington, D.C.* dated November 7, 1994; *Form I-566*.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. She has failed to establish that there are compelling reasons preventing her 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 she is eligible for adjustment of status. The applicant has failed to meet that burden. Accordingly, the decision of the field office director will be affirmed.

ORDER: The decision of the field office director is affirmed.