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APR 11 2008

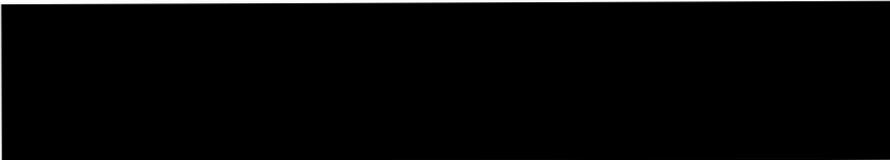
IN RE:

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 District Director, Washington, D.C. and was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed, the previous decisions affirmed and the application denied.

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, 8 U.S.C. § 1101(a)(15)(A)(i).

The district director denied the application for adjustment of status after determining that at the time he applied for adjustment under Section 13, the applicant was still maintaining diplomatic status. *Decision of District Director* dated February 23, 1998. The AAO concurred with the determination made by the district director and dismissed the applicant's appeal. *Decision of the AAO*, dated January 29, 1999.

In requesting the AAO to reconsider its decision, counsel contends that the AAO should have considered evidence of when the applicant's status was terminated other than that provided by the U.S. State Department. Counsel asserts that according to the termination letter from the Bureau of National and Foreign Information of the Philippines, dated May 19, 1986, the termination of the applicant's diplomatic services (along with that of "[a]ll permanent and temporary employees abroad") was "retroactive" to March 31, 1996, four months before he applied for adjustment of status on July 31, 1986. The letter also advises the applicant to change his diplomatic passport to an ordinary passport, stating that the "Ministry of Foreign Affairs will be issuing cancellation orders for all diplomatic passports belonging to recalled attaches." The State Department has indicated that the applicant's diplomatic status was terminated on August 29, 1986. See *Letter from [REDACTED], Chief of the Diplomatic Liaison Division, Visa Office, Department of State*, dated June 3, 1988

Counsel asserts that neither statute nor regulation requires that, at the time of the filing of an application for adjustment, an applicant's diplomatic status be terminated. Counsel observes that Section 13 allows the Attorney General to record the alien's lawful admission for permanent residence as of the date on which the application is approved. Counsel asserts that the Attorney General may similarly adjust the applicant's status if, on the date of adjustment, the alien is no longer maintaining diplomatic status. Counsel also observes that in determining the date that the diplomatic status of an applicant for Section 13 benefits is terminated, the State Department relies on information it receives from the foreign government, a government that may be hostile to the applicant. Counsel contends that because the purpose of Section 13 is to adjust the status of former diplomats that cannot return to their countries for political reasons, it would be contrary to this purpose to give the government of that country, which must report the termination of employment, control over whether the former diplomat can establish eligibility for adjustment under Section 13.

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).

Contrary to the assertions of counsel, the plain language of Section 13(a) requires that an alien not be maintaining status in order to *apply* for adjustment of status. Once the applicant has established that initial eligibility criteria and has applied, then the criteria found in Section 13(b) are considered in determining if the applicant is eligible to be adjusted to permanent resident status. Counsel has cited no other authority to support his interpretation of Section 13. The AAO determines that an applicant for adjustment of status under Section 13 must not be maintaining diplomatic status in order to apply for adjustment under Section 13, and that his or her status must therefore be terminated prior to the date on which the adjustment application is filed.

Pursuant to 8 C.F.R. § 214.2(a), an alien admitted under section 101(a)(15)(A)(i) of the Act maintains that status “for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status.” Thus, the authority to determine the date of termination of status under section 101(a)(15)(A)(i) of the Act rests exclusively with the State Department. An application for adjustment of status under Section 13 filed while the applicant is maintaining diplomatic or semi-diplomatic status is properly denied. However, denial of the application on this ground does not preclude the applicant from filing a new application once the requirement for applying – failure to maintain status – has been met.

The applicant was admitted in A-2 status on April 1, 1983 and served thereafter as an Attache until that status was terminated on August 29, 1986 as determined and reported by the U.S. Department of State. *Letter from [REDACTED], Chief of the Diplomatic Liaison Division, Visa Office, Department of State, dated June 3, 1988.* Therefore, notwithstanding the date on which the applicant’s employment may have been formally terminated by the government of the Philippines, he maintained legal status in the United States under section 101(a)(15)(A)(i) of the Act through August 29, 1986.

The AAO acknowledges that the U.S. government receives information from foreign governments on the termination of the employment of their diplomats, and that these governments may be hostile to aliens seeking adjustment of status under Section 13. However, counsel has failed to submit evidence showing that, in this case, the Philippine government misrepresented to the U.S. government the date it terminated the applicant’s employment on account of political animus.

The AAO affirms its previous decision that the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(i) of the Act, was maintaining that status at the time of his application for adjustment on July 31, 1986, and therefore was not eligible to apply for adjustment under Section 13 at the time of the filing. 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.

**ORDER:** The motion is dismissed. The application is denied.