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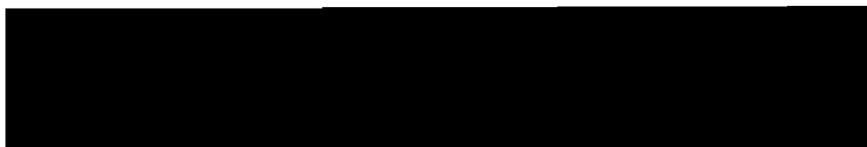
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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MAR 12 2010

FILE:



Office: WASHINGTON DISTRICT

Date:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. The matter is now before the Administration Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant is a native and citizen of the Philippines who is seeking to adjust her status to that of a 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 field office director denied the application for adjustment of status after determining that the applicant had not established that compelling reasons prevent her return to the Philippines. The field office director did not address the issue of whether the applicant's adjustment of status would be in the national interest of the United States. The field office director also noted that the Department of State issued its opinion on December 10, 2008 advising that it could not favorably recommend this matter, as the applicant's reasons for remaining in the United States were not compelling.

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 [Department of Homeland Security] 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 [Department of Homeland Security] 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 [Department of Homeland Security], in its discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the [Department of Homeland Security] approving the application for adjustment of status is made. 8 U.S.C. § 1255b(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 reviews 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 of the 1957 Act. The applicant was given A-1 classification and served as the Cultural Officer and Attaché with the Embassy of the Philippines in Washington, DC. According to Department of State records, the applicant's A-1 classification was terminated May 1, 2007. Accordingly, per the requirements of section 13(a) of the 1957 statute, the applicant held status under 101(a)(15)(A)(i) of the Act but no longer held that status at the time she filed her application for adjustment on July 20, 2007.

In an initial statement appended to the application, the applicant noted the Philippine government's volatile and corrupt system, the meager remuneration and weak law enforcement ensuring peace and order, and insufficient government benefits. The applicant also noted that the United States provides a healthier living environment. In a June 16, 2008 interview with a USCIS officer, the applicant declared: that she could not return to the Philippines because the Philippine environment was not conducive to her economic upliftment; that there was so much corruption in the Philippine government; that the Philippine government did not give you opportunities like in the United States; that she has hypertension and hyperlipidemia and that the Philippines was much more stressful than in the United States; and that her 80-year-old mother, a United States lawful permanent resident, lived with her and it is traditional for the daughter to take care of the mother. The applicant noted that her mother could live with her brother but as he had a child with special needs it was difficult for him, and that because her mother is an immigrant she could not be out of the United States for more than six months.

As noted above, the field office director denied the application for the applicant's failure to establish that compelling reasons prevent her return to the Philippines.

Counsel for the applicant timely submitted a Form I-290B, Notice of Appeal or Motion. Counsel asserts that the field office director erred when determining that the applicant had failed to establish compelling reasons why she is unable to return to the Philippines, the country of her accreditation.

Counsel asserts that the applicant is taking care of her 81-year old mother who is now a United States citizen and that the applicant's mother would suffer extreme hardship if the applicant returned to the Philippines and left her here. Counsel contends that compelling reasons include extreme hardship to a United States citizen qualifying relative. Counsel claims that the applicant's brother cannot adequately care for their mother as he has two children, one of which is a special needs child. Counsel also compares compelling reasons under section 13 to the extreme hardship standard used in suspension of deportation, Form I-601 waivers and/or cancellation of removal applications. Counsel contends that if Congress had intended to limit the meaning of compelling reasons to those rendered stateless or homeless owing to uprisings, aggression or invasion in their respective countries of accreditation, Congress would have done so explicitly. Counsel also submits evidence of the applicant's mother's United States citizenship on appeal.

The AAO concurs with the field office director's determination that the applicant failed to establish compelling reasons that prevent her return to the Philippines. The AAO disagrees with counsel's extreme hardship analogy and his assertion that Congress did not intend to limit the meaning of compelling reasons to those rendered stateless or homeless owing to uprisings, aggression or invasion in their respective countries of accreditation. Upon review of the legislative history of Section 13, the AAO finds 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 AAO has long interpreted Congressional intent in this manner. Section 13 requires that an applicant for adjustment of status under this provision have "compelling reasons demonstrating that the alien is *unable* to return to the country represented by the government which accredited the" applicant. (Emphasis added). The term "compelling" must be read in conjunction with the term "unable" to correctly interpret the meaning of the words in context. Thus, reasons that are compelling are those that render the applicant unable to return, rather than those that merely make return undesirable or not preferred from the applicant's perspective.

According to the American Heritage Dictionary, Fourth Edition, the plain meaning of the term "unable" is "lacking the necessary power, authority, or means." Thus, the "compelling reasons" standard is not a merely subjective standard. Aliens seeking adjustment of status under Section 13 generally assert the subjective belief that their reasons for remaining in the United States are compelling, or that it is interesting or attractive to them to remain in the United States rather than return to their respective countries. What Section 13 requires, however, is that the reasons provided by the applicant demonstrate compellingly that the applicant is unable to return to the country represented by the government which accredited the applicant. Even where the meaning of a statutory provision appears to be clear from the plain language of the statute, it is appropriate to look to the legislative history to determine "whether there is 'clearly expressed legislative intention' contrary to that language, which would require [questioning] the strong presumption that Congress expresses its intent through the language it chooses." *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 433, fn. 12 (1987). The legislative history supports the plain meaning of the language in Section 13 that those eligible for adjustment of status under Section 13 are those diplomats that have been, in essence, rendered stateless or homeless by political upheaval, hostilities, etc., and are thus *unable* to return to and live in their respective countries.

In this matter, the applicant does not provide compelling reasons that preclude her from a return to the Philippines. The applicant's mother, now a United States citizen, may travel with her or remain in the United States. The AAO observes that the applicant indicated that her mother has traveled and lived with her in Japan in years past. The applicant has presented no evidence that her mother is unable to return to the Philippines. The AAO acknowledges the difficulty the applicant faces in returning to the Philippines and the decision whether to have her mother live with her in the Philippines or remain in the United States. The AAO also acknowledges the difficulty the applicant faces in regard to the inconveniences and hardships associated with living in a country that may not provide the applicant the same economic opportunities or healthcare. However, these are not compelling reasons under Section 13. As the director determined, the applicant has not provided evidence that she, her child, or her mother would be at greater risk of harm from the Philippine government due to political changes in the Philippines that occurred while the applicant was employed in the United States for the government of the Philippines. The evidence of record does not show that the applicant and her family are unable to return because of any action or inaction on the part of the government of the Philippines or other political entity there as required under Section 13. The AAO concludes 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. As the applicant has failed to demonstrate that there are compelling reasons preventing her return to the Philippines, the AAO will not address whether the applicant's adjustment of status would be in the national interest of the United States.

The application will be denied for the stated reason set out in the field office director's decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The application is denied.