



U.S. Citizenship
and Immigration
Services

A3

[REDACTED]

Date: **OCT 03 2012**

Office: NATIONAL BENEFITS CENTER

File: [REDACTED]

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:

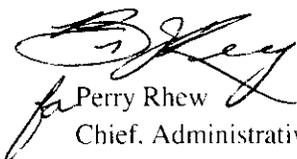
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INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the National Benefits Center Director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

The 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. The director also noted that the Department of State issued its opinion on February 17, 2012 advising that it could not favorably recommend this case as the applicant had not established compelling reasons preventing her return to the Philippines.

On appeal, counsel for the applicant asserts that the field office director erred in his decision; and, that the applicant has established compelling reasons that prevent her return to the Philippines. Counsel submits a brief and additional evidence.

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.

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).

A review of the record established the applicant's eligibility for consideration under section 13 of the 1957 Act. The applicant obtained an A-2 non-immigrant visa on August 22, 2005 and began employment with the Consulate General of the Philippines in San Francisco, California. As a Consular Assistant she processed Philippine passports, visas, and notarized documents, and assisted with protocol from August 22, 2005 continuing to August 22, 2011, when her tour of duty ended. The applicant applied for adjustment of status on September 19, 2011. Per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States pursuant to 101(a)(15)(A)(i) of the Act but no longer held that status at the time she filed this application for adjustment on March 4, 1997.

Upon review of the applicant's sworn statement before a USCIS immigration officer on January 5, 2012, the applicant's counsel's assertions on appeal, as well as the current country conditions in the Philippines, the AAO finds that the applicant has not provided compelling reasons related to political changes in the Philippines that render her as a foreign representative "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which accredited her. The record does not include evidence showing that the applicant is at greater risk of harm because of her specific past government employment, political activities or other related reasons, including her employment as a Consular Assistant. It is noted that by her own sworn testimony before an immigration officer on January 5, 2012, when asked what compelling reason prevents her return to the Philippines, the applicant stated that it is "To give [her] children a good future [and an] established career for her children."

In her July 25, 2012 sworn statement submitted on appeal, the applicant states that she fears persecution by armed rebel organizations, such as the new People's Army (NPA), who target opponents. She states that four of her relatives were victimized by the NPA, two of whom were killed for "uncertain reasons" in 1965, and in 1986, respectively. The applicant does not provide additional evidence regarding any of these incidents regarding her family and the NPA. She also states that the NPA has infiltrated the Southern Tagalog region where she resided. She states that because of her employment with the Philippine embassy she would be identified as a government supporter by the NPA. The applicant submits documentation, including a January 5, 2012 Travel Warning from the U.S. Department of State, Bureau of Consular Affairs, warning of risks of

terrorist activities in the Philippines. There is no indication in the documentation provided that the applicant would be singled out or targeted by such organizations. We also note that although the applicant's fear may be real, it is speculative and no evidence has been presented that the applicant or her family would be targeted by the government of the Philippines.

As set forth in the director's decision, 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. 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. Voluntarily severing ties with the Philippines and establishing a life in the United States is not a compelling reason under Section 13. Similarly, the general hardship of relocating to another country is not a compelling reason under Section 13. The documentation provided does not present compelling reasons that prevent the applicant from returning to the Philippines. The applicant has failed to meet her burden of proof in this regard. As the applicant has not established that there are compelling reasons that prevent her return to the Philippines, the question of whether adjustment of status would be in the national interest need not be addressed.

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.

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