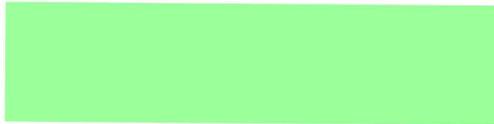


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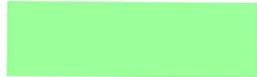
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

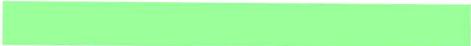


U.S. Citizenship
and Immigration
Services



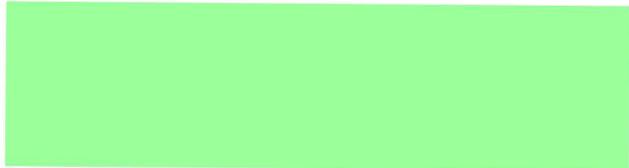
DATE: **OCT 24 2013** Office: NATIONAL BENEFITS CENTER

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Status as a Permanent Resident Pursuant to Section 13 of the Immigration and Nationality Act of 1957, Pub. L. No. 85-316, 71 Stat. 642, as amended.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron M. Rosenberg".

Ron M. Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, National Benefits Center. 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 amended, 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 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 U.S. Department of State issued its opinion on January 26, 2013, recommending that the applicant's request for adjustment of status in the United States be denied because the applicant presented no compelling reasons why she cannot return to the Philippines. *See Director's Decision*, dated March 11, 2013.¹

On April 8, 2013, counsel for the applicant submitted a Form I-290B, Notice of Appeal or Motion, appealing the decision of the director. Counsel asserts that the director erred in denying the application because the director used a more restrictive definition of compelling reasons and that the director failed to recognize that "the political upheaval did result in [the applicant] losing her home and property and thus being effectively rendered homeless if she is forced to return to the Philippines." The record contains statements from the applicant and country condition information on the Philippines.

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,

¹ The record reflects that the current application is the second filed by the applicant. The initial adjustment application was denied by the director and a subsequent appeal was dismissed by the AAO on August 28, 2008.

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.

A review of the record establishes the applicant's eligibility for consideration under Section 13 of the 1957 Act. The applicant was admitted into the United States on January 4, 1988, in an A-2 nonimmigrant status and thereafter served as a [REDACTED] until her status was terminated on September 30, 1993. The record reflects that the applicant performed various duties at the consulate that were supportive of the [REDACTED]. The applicant filed the current Form I-485, Application to Register Permanent Residence or Adjust Status, on June 13, 2011. Therefore, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under section 101(a)(15)(A)(ii) of the Act but no longer held that status at the time of her application for adjustment of status on June 13, 2011.

The issues before the AAO in the present matter are, therefore, whether the record establishes that the applicant has compelling reasons that prevent her return to the Philippines and that her adjustment of status would serve U.S. national interests – requirements set forth in section 13(b) of the 1957 Act.

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).

In the various statements submitted by the applicant in support of her application, the applicant indicated that she does not want to go back to the Philippines because she has no family left in the Philippines, that she has lived in the United States since 1986, and that her children – the only family she has left, are married and have established their lives in the United States. The applicant claimed that because she served the [REDACTED] during the administration of former President [REDACTED] her family property has been confiscated by the [REDACTED] and she fears for her safety because militant and terrorist groups are operating in the Philippines.

Specifically, in a January 24, 1994 Sworn Statement, the applicant stated that “the political situation in the Philippines is unstable, threatening for people like us who have stayed in the U.S. for several years. I could be associated with the [REDACTED] and my properties are already taken over by the [REDACTED]. there is a lot of kidnapping for ransom.” In a February 25, 2008 statement, the applicant stated that she has lived in the United States for a long time and has adjusted well in the country, that her children are no longer familiar with the Philippines and do not know how to speak the Filipino language, Tagalog. Additionally, the applicant stated that she cannot get employment in the Philippines because of her age. And in her September 8, 2011 Sworn Statement, the applicant stated that she is still unable to return to the Philippines because she has no family left in the country, her family property was taken over and occupied when the [REDACTED] was very active, and that her two children, the only family she has left, are married and have established their lives here in the United States. The applicant indicated these statements as compelling reasons why she cannot return to the Philippines.

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 and 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 legislative history of Section 13, including the 1981 amendment adding the term “compelling reasons,” 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.

What Section 13 requires 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. The AAO finds that a review of the totality of the Section 13 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.

The AAO has reviewed the applicant’s statements, and other documentation submitted in the record and find them insufficient to establish compelling reasons that prevent her return to the Philippines. The AAO notes that the applicant’s desire to remain in the United States for a better living standard and to stay close to her adult children and their families are not considered compelling reasons within the

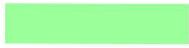
meaning of Section 13. As indicated above, the purpose of Section 13 is to offer protection to those individuals who are unable to return to the State that accredited them due to changes in that State government and because they would be targeted for their past specific role in working for that State. In this case, the applicant has not provided sufficient credible evidence to establish that, as a returning diplomat, she would be at greater risk of harm in the hands of the government or other entities there because of her past government employment, political activities or other related reason. The evidence of record does not establish that the applicant is unable to return to the Philippines 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 applicant's claim that she would be targeted by the current government of the Philippines or other political entities in the Philippines because of her service under former [REDACTED] is not supported by any evidence in the record. The applicant has failed to submit any evidence demonstrating that individuals who served the [REDACTED] such as the applicant have been targeted or will be targeted by the current government of the Philippines. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO also acknowledges the risk of living in certain areas of the Philippines because the turmoil and violence exercised by terrorist groups and other anti-government factions continues to exist. We further acknowledge that the applicant may have some difficulties obtaining employment in the Philippines. However, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The applicant has provided no substantive evidence to establish that she would be targeted by the terrorist or anti-government groups because of her past government employment, political activities or other related reasons. Also, the general threat of terrorism is not a sufficiently compelling reason under Section 13 as the threat is directed to the general population and not specifically to the applicant. As previously indicated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, id.* It is also noted that the U.S. Department of State has recommended that the application be denied as the applicant had failed to provide compelling reasons that prevent her return to the Philippines. See Interagency Record of Request (Form I-566). The AAO, therefore, 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 that prevent her return to the Philippines, the question of whether her adjustment of status would be in the national interest of the United States 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 that preclude 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 he or she is eligible for adjustment of status. The applicant has failed to meet that burden. Accordingly, the appeal will be dismissed.

(b)(6)



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NON-PRECEDENT DECISION

ORDER: The appeal is dismissed.