



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: Office: NATIONAL BENEFITS CENTER
SEP 20 2013

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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: SELF-REPRESENTED

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 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 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 his return to the Philippines. The director also noted that the U.S. Department of State issued its opinion on February 2, 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 he cannot return to the Philippines. *See Director's Decision*, dated February 20, 2013.¹

On March 19, 2013, the applicant submitted a Form I-290B, Notice of Appeal or Motion, appealing the decision of the director. The applicant also submitted a statement and copies of his son's medical records in support of the appeal.

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

¹ The director also denied the application of the applicant's spouse and his two dependent children. However, only the applicant has filed a Form I-290B, appealing the director's decision. For each adverse decision, an applicant must submit a separate Form I-290B and associated fee. *See* 8 C.F.R. § 103.3(a)(1).

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 August 26, 2002, in an A-2 nonimmigrant status and served as [REDACTED] for the Consulate of the Philippines in San Francisco, California until his resignation in 2008. The applicant's status was terminated by the U.S. Department of State on August 25, 2008. *See Record of Sworn Statement by [REDACTED]*, dated October 2, 2011; *See also, Notification of Termination from the U.S. Department of State, Office of Foreign Missions*. The applicant described his duties as: to process passports and to serve as an assistant [REDACTED] at the Philippines Consulate in San Francisco, California. In this capacity, the applicant performed duties that were in support of the [REDACTED] diplomatic duties. Accordingly, the applicant performed duties that were semi-diplomatic in nature. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on February 19, 2009. 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 his application for adjustment of status on February 19, 2009.

The issues before the AAO in the present matter are, therefore, whether the record establishes that the applicant has compelling reasons that prevent his return to the Philippines and that his 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).

At his adjustment interview on October 4, 2011, the applicant stated under oath before an immigration officer that the compelling reasons that prevent his return to the Philippines are his health, his children's education in the United States and the lack of security in his country. The applicant stated that he is receiving treatment for high blood pressure and would like to remain in the United States to continue his treatment. The applicant indicated that his two children want to finish their schooling in the United States. He also indicated that the Philippines is a dangerous place to go. In an undated statement submitted into the record, the applicant in essence repeated the concerns he had expressed at his

adjustment interview as to the reasons he does not want to return to the Philippines. In addition, the applicant stated that terrorist groups such as “NPA and Abu-Sayyaf” prey on foreigners and individuals with mixed ethnicity and that “given my family’s mixed appearance and my wife’s maiden name ([REDACTED] which is also used by my children), we easily become targeted by these terrorist groups which are abundant in our native province of Cavite.” See *Sworn Affidavit* by [REDACTED] dated October 4, 2011.

On appeal, the applicant submitted another statement. In that statement the applicant added the medical condition of his son as another reason he cannot return to the Philippines. The applicant submitted copies of his son’s medical records in support of the appeal. The applicant also stated that his family would face extreme financial hardship and great possibility of being homeless in the Philippines because he will have difficulties finding employment there. The applicant further stated that his spouse has a pending relative petition filed on her behalf by her father, and that he would like to remain in the United States so that his spouse can pursue her adjustment of status based on the petition.

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. The AAO acknowledges the reasons provided by the applicant for not wanting to return to the

Philippines, however, such reasons are not considered compelling within the meaning of section 13. The applicant's desire to remain in the United States so that he and his son may continue to receive medical treatment, his children may continue their education in the United States and his spouse may adjust her status based on a family petition by her father, 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 matter, the AAO finds the record insufficient to establish that the applicant in his role as a returning diplomat would be at greater risk of harm in the hands of the government or other entities there because of his past government employment, political activities or other related reason. The applicant's desire to create a better life for himself and his family in the United States is not considered compelling reasons that preclude his return to the Philippines as required under Section 13 of the Act. 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 AAO also acknowledges the risks 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. The AAO further acknowledges the hardships the applicant's children may encounter in relocating to the Philippines after a prolonged absence from the country. 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 he and his family would be targeted by these groups because of his past government employment, political activities or other related reasons. The AAO notes that, 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. 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)). 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 his return to the Philippines. *See* Interagency Record of Request (Form I-566). The AAO, therefore, concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to the Philippines. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to the Philippines, the question of whether the adjustment of status of the applicant 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. He has failed to establish that there are compelling reasons that preclude his 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.

ORDER: The appeal is dismissed.