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



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: WASHINGTON DISTRICT

Date:

MAR 17 2009

IN RE:

[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:

[REDACTED]

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. and 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 a member of her cousin's household, 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 field office director denied the application for adjustment of status of the applicant's cousin after determining that the applicant's cousin had failed to demonstrate that compelling reasons prevent her return to the Philippines. The field office director denied the applicant's adjustment application on the basis of her cousin's ineligibility for benefits under Section 13.

In a separate decision, the AAO dismissed the appeal of the applicant's cousin as she was maintaining diplomatic status at the time she filed her adjustment application and thus was statutorily ineligible to apply for adjustment of status under Section 13.

On appeal, counsel for the applicant asserts that the applicant was admitted into the United States in 1987 on an A-3 visa as a family member of a consulate worker for the Consul of the Philippines. Counsel asserts that the director failed to consider that the applicant in this matter is 77 years old and has been living in the United States for over 20 years. Counsel contends that the field office director failed to consider all the circumstances affecting the derivative family members of the principal applicant and the compelling reasons that prevent their return to the Philippines.

The AAO finds that the applicant has not established her eligibility for consideration under Section 13. As the AAO determined that the applicant's cousin was ineligible to apply for Section 13, any immediate family member whose eligibility for adjustment under Section 13 derived from the eligibility of the 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) and would also be ineligible. Moreover, the applicant in this instance has not established that she is eligible for consideration under Section 13, as Section 13 of the Act of September 11, 1957, as amended on December 29, 1981, by Pub. L. 97-116, 95 Stat. 1161, is limited to:

(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,

The applicant in this matter was not admitted into 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). For this additional reason, the applicant in this matter is not eligible for adjustment of status pursuant to Section 13.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.