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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



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FILE [REDACTED] Office: WASHINGTON DISTRICT Date: **MAR 26 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:

SELF-REPRESENTED

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. The matter is now before the Administration Appeals Office (AAO) on appeal. The appeal will be summarily dismissed. The application will be denied.

The applicant is a native and citizen of Sri Lanka 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 the daughter-in-law of an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The field office director denied the application for adjustment of status after determining that the applicant had not established that she had entered the United States in A-1, A-2, G-1, or G-2 classification. The field office director found that the applicant had indicated on the Form I-485, Application to Register Permanent Resident or Adjust Status, that she had last entered the United States in B-2, visitor status. The field office director determined that the applicant was not eligible for consideration under Section 13.

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 Attorney General for adjustment of his status to that of an alien lawfully admitted for permanent residence.

Title 8 Code of Federal Regulations Part 245.3 states in pertinent part:

Any application for benefits under section 13 of the Act of September 11, 1957, as amended, must be filed on Form I - 485 with the director having jurisdiction over the applicant's place of residence. The benefits under section 13 are 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 Immigration and Nationality 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 which accredited the applicant and that adjustment of the applicant's status to that of an alien lawfully admitted for permanent residence would be in the national interest. 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 family members, 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 applicant timely submitted a Form I-290B. The applicant indicates that she married Rukshan C. Munasinghe on September 20, 2003. The applicant indicates further that her husband held a G-1 visa and had applied to adjust his status under Section 13. The applicant also noted that the individual who prepared her Form I-485 incorrectly indicated on the Form I-485 that she had entered the United States in B-2 status. The applicant states that as she told the immigration officer at her interview with her husband on February 6, 2007, she entered the United States at Kennedy airport in New York City on March 3, 2002 with a passport purchased from someone else. On appeal, the applicant states that she entered the United States in 2002 by crossing the Canadian border. The applicant further states that she traveled to Sri Lanka with her husband on advanced parole, pending the adjudication of their Form I-485 applications, and returned to the United States on September 14, 2006. The applicant asserts that her husband held G-1 classification and "was a registered member of the [S]tate Depart. to work in the missions of Sri Lanka and Haiti."

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

Upon review of the record, the record does not contain evidence substantiating that the applicant is eligible to adjust status under Section 13. The record includes the applicant's husband's sworn statement at the February 6, 2007 interview before a United States Citizenship and Immigration Services (USCIS) officer that his G-1 classification was based on the G-1 classification of his father. Thus, the applicant's husband is not independently eligible for G-1 classification. Moreover, the benefits of section 13 are 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 Immigration and Nationality Act who performed diplomatic or semi-diplomatic duties and to their immediate families. The AAO interprets the above language to require that the principal alien's immediate family member must also have been admitted under section 101, paragraphs (a)(15)(A)(i), (a)(15)(A)(ii), (a)(15)(G)(i), or (a)(15)(G)(ii) of the Immigration and Nationality Act. In this matter, the principal alien is the applicant's father-in-law. In addition, the applicant was not admitted in any of the requisite classifications and thus is *prima facie* ineligible for the benefits of section 13.

The record on appeal does not identify specifically any erroneous conclusions of law or statements of fact made by the field office director as a basis for the appeal. The AAO is without further evidence or argument to evaluate regarding the applicant's failure to establish essential elements of eligibility for this benefit. The applicant's failure to specifically address the field office director's findings and timely present evidence and argument identifying any perceived erroneous conclusions of law or statements of fact mandate the summary dismissal of the appeal.

Inasmuch as the applicant has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

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.

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