

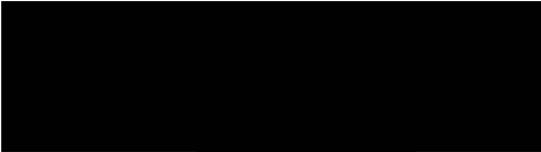
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U.S. Department of Homeland Security  
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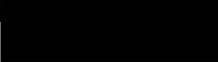


U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



FILE:



Office: WASHINGTON, D.C.

Date:

**AUG 20 2008**

IN RE:

Applicant:



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:



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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, 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 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 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)(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 after determining that the applicant had failed to demonstrate that he performed semi-diplomatic or diplomatic duties, that compelling reasons prevent his return to the Philippines or that adjustment would be in the national interest. *Decision of Field Office Director*, dated January 8, 2008.

On appeal, counsel contends that the applicant's duties were diplomatic, as he was responsible for dealing with former [REDACTED], dealings which would result in serious harm to the applicant if he returns to the Philippines. Counsel also asserts that the applicant was in charge of classified documents, a responsibility that is diplomatic in nature.

On the Form I-290B, counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days. On July 9, 2008, the AAO sent a notice by fax to counsel stating that no such documentation had been received, and requesting that a copy of any additional brief or evidence along with evidence of the date it was originally filed be submitted within five business days. To date, no response to this notice has been received. Therefore, the record is considered complete.

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.

(b) If, after consultation with the Secretary of State, it shall appear to the satisfaction of the Attorney General 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 Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

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.

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).

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).

The applicant was last admitted in A-2 status on August 17, 1994 and served as a Consular Assistant/Property Officer in the Consulate General of the Philippines in Honolulu, Hawaii until his resignation on September 1, 1994. *See Letter from [REDACTED], Foreign Service Staff Officer, Consulate General of the Philippines, dated August 24, 1994; Letter from S [REDACTED], Consul General, Consulate General of the Philippines, dated September 1, 1994; Form I-94, Departure Record.*

The record shows that the applicant was admitted under section 101(a)(15)(A)(ii) of the Act, but the field office director found that the applicant did not perform duties of a diplomatic or semi-diplomatic nature. The AAO does not concur. In his sworn statement taken on April 25, 2001, the applicant indicated that he kept records at the consulate, decoded confidential messages from the Philippine Department of Foreign Affairs, received and delivered fax messages to the consul general, and performed surveillance on former [REDACTED]. The terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. 8 C.F.R. § 245.3 does provide, however, that those duties of a custodial, clerical, or menial nature are not to be considered diplomatic or semi-diplomatic. The AAO acknowledges that the standard definitions of terms such as diplomat, diplomatic and diplomacy are varied and broad, and that, in practice, diplomacy may encompass many responsibilities and duties. The essential role of a diplomat is the representation of a country in its relations with other countries. *See American Heritage Dictionary of the English Language, 4th Edition, 2000* (Diplomat: One, such as an ambassador, who has been appointed to represent a government in its relations with other governments); *Black's Law Dictionary* (Diplomacy: The art and practice of conducting negotiations between national governments). The inclusion of the term semi-diplomatic in 8 C.F.R. § 245.3 indicates that those not engaged in overt negotiation or representation, but who perform duties in direct support of such activities, may also be considered for adjustment of status under Section 13 unless their duties are merely custodial, clerical or menial.

Preserving as confidential a government's secrets is an essential component of diplomatic representation. The evidence demonstrates that the applicant was entrusted with decoding confidential messages sent to the consulate. It also shows that he collected and transmitted sensitive information concerning former [REDACTED]. Though many of the applicant's duties as a property officer may have been clerical, the applicant's responsibilities regarding receiving, collecting and transmitting confidential information was semi-diplomatic in nature. Accordingly, the determination by the field officer director that the applicant did not perform diplomatic or semi-diplomatic duties is withdrawn. Per the requirements of Section 13, the applicant was admitted to the United States in diplomatic or semi-diplomatic status under 101(a)(15)(A)(ii) of the Act but no longer held that status at the time of his application for adjustment on September 7, 1994.

However, the applicant has not demonstrated that he is unable to return to the Philippines for compelling reasons. In his sworn statement, that applicant states that he is afraid of returning to the Philippines because he collected and transmitted information about former [REDACTED]. However, the applicant has submitted no other evidence to show that this work in Hawaii places him in danger in the Philippines. It is noted that former [REDACTED] is deceased and the Philippines has been governed by several administrations since his removal from power. 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)). As the applicant has failed to demonstrate that there are compelling reasons preventing his 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. He has failed to establish that there are compelling reasons preventing his return to 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 is eligible for adjustment of status. The applicant has failed to meet that burden. Accordingly, the decision of the field office director will be affirmed.

**ORDER:** The appeal is dismissed.