

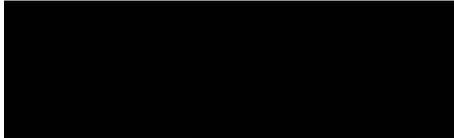
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



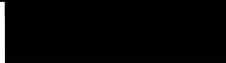
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



*Handwritten initials or mark*

FILE:



Office: WASHINGTON DISTRICT

Date:

**AUG 28 2008**

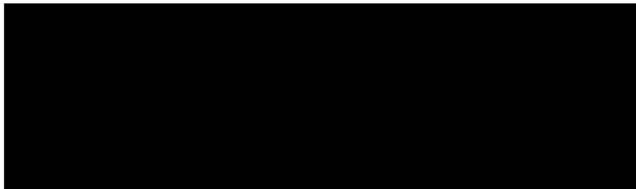
IN RE:

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 "Robert 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 on appeal to the Administrative Appeals Office (AAO). 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 an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(ii) of the Immigration and Nationality Act (the 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 she is unable to return to the Philippines for compelling reasons. *Decision of Field Office Director*, dated May 29, 2008.

On appeal, counsel contends that field office director failed to consider all the circumstances, including the changes that have occurred over the last fifteen years that the applicant has been pending. Counsel asserts that the applicant fears returning to the Philippines because her employment during the administration of former President [REDACTED] resulted in the confiscation of her property in the Philippines and places her at risk of harm from insurgent and terrorist groups there. Counsel also contends that the applicant, now an elderly woman, has no employment prospects and no longer has any family to support her in 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 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.

8 U.S.C. § 1255(b).

The plain language of Section 13 requires that an alien must fail to maintain diplomatic or semi-diplomatic status in order to be considered for adjustment of status under this provision, which is consistent with the congressional intent to grant permanent resident status to former diplomats or foreign representatives rendered "stateless or homeless" following political upheavals in the country represented by the government which accredited them.

*See* Statement of Senator John F. Kennedy, *Analysis of Bill to Amend the Immigration Nationality Act*, 85th Cong., 103 Cong. Rec. 14660 (August 14, 1957). An applicant for adjustment of status under Section 13 must not be maintaining diplomatic status in order to *apply* for adjustment on this basis. Once the applicant establishes eligibility to apply by virtue of having had such status terminated, the criteria provided in paragraph b of Section 13 are reviewed to determine if the applicant is eligible to be adjusted to lawful permanent resident status.

The record reflects that the applicant was maintaining diplomatic status at the time she filed her adjustment application on or before September 29, 1993. The applicant indicated that she was still employed at the Philippine Consulate General on her Form-325A (Biographic Information), which she signed on September 22, 1993, the same date she signed her Form I-485 Application to Register Permanent Residence or Adjust Status. On the Form I-566 Interagency Record of Request, the applicant indicated that her “tour of duty” was not expected to end until September 30, 1993. The U.S. State Department has also confirmed that the applicant was maintaining diplomatic status at the time she applied for adjustment of status. *See Form I-88.*

Pursuant to 8 C.F.R. 214.2(a), an alien admitted under section 101(a)(15)(A)(ii) of the Act maintains that status “for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status.” Thus, the authority to determine the date of termination of status under section 101(a)(15)(A)(ii) of the Act rests exclusively with the State Department.

An application for adjustment of status under Section 13 filed while the applicant is maintaining status under section 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Act is properly rejected. However, rejection of the application on this ground does not preclude the applicant from filing a new application once the requirement for applying—failure to maintain status—has been met. The applicant was admitted to the United States under 101(a)(15)(A)(ii) of the Act, but was maintaining that status at the time of her application for adjustment on or before September 29, 1993, and therefore was not eligible to apply for adjustment under Section 13 at the time of filing.

As stated above, the applicant is not eligible for consideration under Section 13 because she was still maintaining status under 101(a)(15)(A)(i) of the Act at the time of filing. 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.