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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

A3



FILE: [Redacted] Office: WASHINGTON DISTRICT Date: JUL 23 2008

IN RE: Applicant: [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:



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 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 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 failed to demonstrate that compelling reasons prevent her return to the Philippines or that adjustment would be in the national interest. Decision of Field Office Director, dated December 12, 2007.

On appeal, counsel cites a 1986 affidavit from the applicant and contends that "there is still sufficient evidence today" showing that there is a threat to the applicant in the Philippines based on her close association with the Marcos regime. Motion to Reconsider at 2. Counsel states that the applicant's "distinct, high-level, and personal knowledge of the Marcos family is valuable to a multitude of interests," including the present government of the Philippines and supporters and members of the Marcos Regime who continue to hold assets and wealth. Id. at 3. Counsel asserts that "Imelda Marcos return to the Philippines and the efforts of her and her family to regain power, as well as the continued targeting of Ms. Marcos and her financial assets by the current government, make anyone closely associated with the Marcoses, targets as well." Id. at 4. Counsel asserts that the applicant's vital and indispensable contributions to the field of biological research are sufficient evidence showing that her adjustment of status is in the national interest of the United States. Id. at 1.

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).

A review of the record establishes the applicant's eligibility for consideration under Section 13. The applicant was last admitted in G-1 status on February 19, 1984 and served as an Attaché in the Philippine Permanent Mission to the United Nations from September 21, 1983 until her resignation on May 17, 1986. See Letter from Rodolfo S. Sanchez, Ambassador, Deputy Permanent Representative, Permanent Mission of the Philippines to the United Nations, Form I-94, Departure Record. Therefore, per the requirements of Section 13, the applicant was admitted to the United States in diplomatic or semi-diplomatic status under 101(a)(15)(G)(i) of the Act but no longer held that status at the time of her application for adjustment in June 1986.

However, the applicant has not demonstrated that she is unable to return to the Philippines for compelling reasons. Counsel's assertions concerning current threats against the applicant are not consistent with the applicant's own sworn testimony at her interview on July 11, 2006. In response to the question "[d]o you believe that you or any members of your family would be subject to persecution if they were required to depart to your country," the applicant stated:

You know, frankly speaking not anymore. At the time when we filed it, yes. But that has been twenty years ago And there have been changes in governments. . . . So conditions have changed, unfortunately. But at the time that we filed it in all honesty, yes, we could not go back because we were very associated, identified with the Marcos regime.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO also notes that the applicant has submitted evidence showing that Imelda Marcos has returned and been elected to public office in the Philippines, notwithstanding numerous lawsuits filed against her. There is no evidence that the government of the Philippines will not allow the applicant to return, or that she is the subject of any investigation or legal proceedings there. The AAO acknowledges the evidence showing the applicant's contributions to the United States, but concludes that there is insufficient evidence showing that the applicant has compelling reasons that prevent her return to the Philippines.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. She has failed to establish that there are compelling reasons preventing her 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 she 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 and the appeal is dismissed.

ORDER: The appeal is dismissed.