



U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: **FEB 20 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:

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 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 spouse of 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 spouse after determining: that the State Department had informed United States Citizenship and Immigration Services (USCIS) that the applicant's A-2 status had not been terminated; that the applicant had not demonstrated that he performed diplomatic or semi-diplomatic duties for the country that had accredited him; that the applicant had failed to demonstrate that compelling reasons prevent his return to Sri Lanka; and that his adjustment of status would be in the national interest of the United States. The field office director denied the applicant's adjustment application on the basis of her spouse's ineligibility for benefits under Section 13. Counsel has appealed both decisions.

In a separate decision, the AAO dismissed the appeal of the applicant's spouse on the grounds that he failed to establish that he performed diplomatic or semi-diplomatic duties for the country that accredited him as required under Section 13. The AAO also concurred with the field office director's determination that the applicant was ineligible to apply for adjustment of status pursuant to Section 13, as the Department of State records did not show that the applicant's status had been terminated. As the applicant's eligibility for adjustment under Section 13 derives from the eligibility of her spouse, the applicant is also ineligible for adjustment of status.

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.