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**U.S. Citizenship
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[REDACTED]

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:

[REDACTED]

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 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)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(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 his return to the Philippines. The field office director also noted that the Department of State issued its opinion on July 7, 2008 advising that it could not favorably recommend this case as the applicant had not established compelling reasons preventing his return to the Philippines.

On appeal, counsel for the applicant submits a brief and documentation.

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 [Department of Homeland Security] 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 [Department of Homeland Security] 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 [Department of Homeland Security], in its discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the [Department of Homeland Security] approving the application for adjustment of status is made. 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 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 reviews 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 of the 1957 Act. The applicant obtained an A-1 visa and began employment with the Consulate General of the Philippines, San Francisco, California as Consul in 1996 continuing to May 2002. The applicant applied for adjustment of status on July 12, 2002. Per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States pursuant to 101(a)(15)(A)(i) of the Act but no longer held that status at the time he filed this application for adjustment on July 12, 2002.

The AAO concurs with the field office director's determination that the applicant has failed to establish compelling reasons that render him and his family unable to return to the Philippines. As referenced above, the legislative history of Section 13 shows that Congress intended that "compelling reasons" relate to political changes that render diplomats and foreign representatives "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which accredited them. Section 13 requires that an applicant for adjustment of status under this provision have "compelling reasons demonstrating that the alien is *unable* to return to the country represented by the government which accredited the" applicant. (Emphasis added). The term "compelling" must be read in conjunction with the term "unable" to correctly interpret the meaning of the words in context. Thus, reasons that are compelling are those that render the applicant unable to return, rather than those that merely make return undesirable or not preferred from the applicant's perspective.

According to the American Heritage Dictionary, Fourth Edition, the plain meaning of the term "unable" is "lacking the necessary power, authority, or means." Thus, the "compelling reasons" standard is not a merely subjective standard. Aliens seeking adjustment of status under Section 13 generally assert the subjective belief that their reasons for remaining in the United States are compelling, or that it is interesting or attractive to them to remain in the United States rather than return to their respective countries.

In the applicant's personal statement, dated July 12, 2002, the applicant noted that he began his service to the Philippine government in June 1971 and that he worked extensively in passport fraud detection as well as passport fraud prevention for a number of years, gaining expertise in this area. The applicant stated that he worked with a team of individuals from the Philippine and United States governments to arrest, prosecute, and imprison a notorious individual involved in passport fraud. The applicant noted that he was transferred to the Philippine Consulate General in Hong Kong to serve as an Administrative Officer from 1984 to 1992 and that upon completion of his tour of duty in Hong Kong, he and his family returned to Manila, Philippines. The applicant stated that he and his family "lived in a state of constant alertness" while he was assigned to Manila because of his past association in the investigation and prosecution of passport fraud cases. The applicant indicated his family felt relieved "to be away from the eye of the storm" when he was transferred to San Francisco, California. The applicant further stated that his "latent fear of possible retaliation from passport crime syndicates continues to haunt [him] up to now." The applicant referenced the kidnappings of two relatives for ransom and the fear that his relatives may have included his name on a list of possible victims the kidnappers required his relatives to provide. The applicant, in a December 20, 2006 sworn statement before a USCIS immigration officer, reiterates that he fears that his life and that of his family would be in danger in the Philippines as he was involved in passport fraud investigations and because of his contribution to these investigations "some big time fraudulent criminals were apprehended by police authorities." He indicates that he fears that these individuals still harbor a grudge against him.

The AAO has reviewed the applicant's statements, counsel's assertions on appeal, as well as the current country conditions in the Philippines. The AAO acknowledges that certain areas in the Philippines are more subject to turmoil than others and that kidnapping and threats do occur. However, the applicant has not provided compelling reasons related to political changes in the Philippines that render him as a diplomat and foreign representative "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which accredited him. The AAO finds that the record does not include evidence showing that the applicant is at greater risk of harm because of his specific past government employment, political activities or other related reasons, including his involvement in passport fraud detection and prevention. 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)).

The AAO acknowledges the applicant's fear due to his work in the 1980s and 1990s relating to passport investigation; however the applicant lived in Manila for several years after his involvement in the investigations ended. The record contains no information regarding incidents that occurred while the applicant lived in the Philippines, after the applicant's assistance in the passport investigations. The AAO does not find that the applicant has substantiated that he would be a specific target of the criminals he investigated with others. No evidence has been presented that individuals involved in the investigation have been the target of these criminals. It is also noted that the State Department has objected to the applicant being granted adjustment of status and indicated that it does not believe that compelling reasons prevent the applicant's return to the Philippines. See Interagency Record of Request (Form I-566). The record does not include the evidence necessary to establish that there are compelling reasons that prevent the applicant's return to the Philippines. The

applicant has failed to meet his burden of proof in this regard. As the applicant has not established that there are compelling reasons that prevent 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 the 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 appeal will be dismissed.

ORDER: The appeal is dismissed.