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

A3

FILE:

Office: WASHINGTON DISTRICT

Date:

FEB 20 2009

IN RE:

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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 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, 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 performed duties of a diplomatic or semi-diplomatic nature, that compelling reasons prevent her return to the Philippines, and that her adjustment of status would be in the interest of the United States. The field office director also noted that the Department of State issued its opinion on February 26, 2008 advising of its recommendation that the applicant's request to adjust status be denied. *Decision of Field Office Director*, dated March 13, 2008.

On appeal, counsel for the applicant submits the applicant's additional sworn statement, excerpts from news reports, and government issued documents, and resubmits the applicant's employment certification issued by the New York Consulate General of 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 [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 shows that the applicant obtained an A-2 visa and began employment with the Consulate General of the Philippines, New York, as a Consular Assistant and Collecting Officer from May 31, 2000 to September 30, 2006. *See Employment Certification Letter of [REDACTED] Consulate General of the Philippines*, dated February 15, 2007; *Sworn Statement of [REDACTED]* dated March 22, 2007. The applicant applied for adjustment of status on November 10, 2006.

The record shows that the applicant was admitted under section 101(a)(15)(A)(i)<sup>1</sup> of the Act and no longer maintained that status at the time she filed for adjustment of status. The applicant in her sworn statement of March 22, 2007, declared that the title of her position was Collecting and Property Officer and that her duties involved collecting money for the processing of documents and ordering supplies for the office. The applicant also submitted the February 15, 2007 employment certification from the Consulate General of the Philippines indicating that as "Consular Assistant" the applicant "liaised with her counterparts in other foreign consular establishments in New York on consular and fiscal matters." Based on this limited information, the field office director correctly determined that the applicant's duties appeared clerical and not diplomatic or semi-diplomatic in nature. On appeal, the applicant provides an affidavit elaborating upon the nature of her duties, indicating that her duties included coordinating and facilitating official visits, acting as a liaison officer between the Philippine government

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<sup>1</sup> The applicant's visa shows that she was accorded an A-2 classification; however, the Form I-94 showing her admission into the United States on May 30, 2000 indicates that she was admitted in A-1 classification.

through the Consulate General and other foreign governments, as well as other duties as required by the Consul General.

The terms diplomatic and semi-diplomatic are not defined in Section 13 or pertinent regulations. 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, 8th Edition, 2004* (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 who did not engage in overt negotiation or representation, but who performed duties in direct support of such activities, may also be considered for adjustment of status under Section 13 unless their duties were merely custodial, clerical or menial. Although the applicant initially did not provide detail regarding her duties as a consular assistant or collecting and property officer and the limited information regarding her duties suggested she performed clerical work, the duties described on appeal may be characterized as semi-diplomatic. Therefore, the field office director's finding that the applicant did not perform diplomatic or semi-diplomatic duties is withdrawn.

Nevertheless, the AAO concurs with the field office director's determination that the applicant has failed to establish compelling reasons that render her and her 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 initial sworn statement of March 22, 2007, the applicant indicated that in the Philippines, especially in her home town, communist rebels were creating chaos and trying to take control and that these were the compelling reasons that prevented her return to the Philippines. On appeal, the applicant elaborates on her perceived inability to return to the Philippines. The applicant declares that returning to the Philippines would result in actual and imminent threats against her and her

family's life, property, and well being from the rebel forces. She claims that her family has been subject to extortion and terrorism from the New People's Army (NPA). The applicant asserts that her family has received threats from forces publicly known to be affiliated with the rebel army and that her brother-in-law was killed to send her family a signal. The applicant further claims that she and her family cannot get assistance or protection from the police or local authorities. **The applicant provides a photocopy of a police report of a shooting incident on July 3, 2007 indicating that [REDACTED] was ambushed by an unidentified suspect and was shot and killed.** The applicant also provides excerpts from Internet versions of newspaper reports of a former police officer turned politician who was shot and killed in April 2007 and the town police chief's indication that the individual was shot because he refused to pay a fee demanded by the NPA and that this was an isolated incident.

The AAO has reviewed the applicant's statements and claims on appeal as well as the described country conditions in the Philippines. The AAO acknowledges that certain areas in the Philippines are more subject to turmoil than others and that threats and intimidation by thugs affiliated with certain political groups exist. However, the applicant has not provided compelling reasons related to political changes in the Philippines that render her 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 them. The AAO finds that the record does not include evidence showing that the applicant is at greater risk of harm because of her specific past government employment, political activities or other related reasons. 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 applicant's claims that her family has been targeted and that her brother-in-law was killed as a threat to her family is not substantiated in the record. The police report does not identify the suspect and there is no information in the record that substantiates the applicant's speculation that her brother-in-law was killed as a means to threaten her family. The AAO acknowledges that the Philippine government continues to battle the NPA, but the record does not provide any specific evidence that the applicant would be a target of the NPA or other political groups because of her past government employment. The applicant's fear is speculative and not substantiated in the record. 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 her burden of proof in this regard.

Although unnecessary to address as the applicant has failed to demonstrate that there are compelling reasons preventing her return to the Philippines, the AAO briefly notes that the applicant has also failed to demonstrate that her adjustment of status is in the national interest. The applicant indicates that she has been promoting better understanding between the United States and the Philippines and that if granted permanent residence, she and her husband will be able to substantially and prospectively benefit the national economy and welfare of the United States. The applicant's indication that she and her husband are productive members of society and she wants to continue to promote understanding between the two cultures, while admirable, does not demonstrate that her adjustment of status would be in the national interest of the United States as intended by the statute.

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 the Philippines and that her continued stay in the United States would be in the national interest of the United States. 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.