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**U.S. Citizenship
and Immigration
Services**



B2

FILE:



Office: WASHINGTON DISTRICT

Date:

FEB 24 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).

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John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. The matter is now before the Administration Appeals Office (AAO) on appeal. The appeal will be summarily dismissed. The application will be denied.

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)(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 not established that compelling reasons prevent his return to 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.

Title 8 Code of Federal Regulations Part 245.3 states in pertinent part:

Any application for benefits under section 13 of the Act of September 11, 1957, as amended, must be filed on Form I - 485 with the director having jurisdiction over the applicant's place of residence. The benefits under section 13 are 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 Immigration and Nationality 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 which accredited the applicant and that adjustment of the applicant's status to that of an alien lawfully admitted for permanent residence would be in the national interest. 8 U.S.C. § 1255b(b).

Counsel for the applicant timely submitted a Form I-290B indicating that a brief and/or additional evidence would be submitted in 30 days. On the Form I-290B, counsel asserts that United States Citizenship and Immigration Service (USCIS) erred when rendering its decision and did not give merit and due consideration to the documentary evidence and compelling reasons provided by the beneficiary.

On January 23, 2009, the AAO requested that counsel of record indicate whether he had submitted a brief or evidence. The AAO clearly stated that the facsimile is not and should not be construed as

requesting or permitting the applicant or counsel to submit a late brief and/or evidence in response to the request. In a January 29, 2009 response, counsel checked the box on the original facsimile indicating that he had not submitted a brief or further evidence and returned the facsimile. On the cover letter to the facsimile, counsel noted that a brief had been enclosed. The brief is dated January 29, 2009 and includes exhibits regarding the country conditions of the Philippines and the applicant's June 22, 2006 statement previously submitted and considered by the field office director. As counsel did not submit the brief timely, the brief will not be considered a part of the record.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

Upon review of the record, neither the applicant nor counsel identifies specifically any erroneous conclusions of law or statements of fact made by the field office director as a basis for the appeal. The AAO is without further evidence or argument to evaluate regarding the applicant's failure to establish essential elements of eligibility for this benefit. Counsel and the applicant's failure to specifically address the field office director's findings and timely present evidence and argument identifying any perceived erroneous conclusions of law or statements of fact mandate the summary dismissal of the appeal.

Inasmuch as the applicant has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

The application will be denied for the stated reason set out in the field office director's decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed. The application is denied.