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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



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

13

FILE: [REDACTED] Office: WASHINGTON DISTRICT

Date:

MAR 12 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).

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 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 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 April 3, 2008 advising that it could not recommend this matter as the applicant's reasons to remain in the United States are not compelling.

On appeal, counsel for the applicant asserts that the field director erred in her decision. Counsel submits a brief and documentation in support of the appeal.

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. § 1255(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.

A review of the record establishes the applicant's eligibility for consideration under section 13 of the 1957 Act. He entered the United States in A-2 classification in 2000 and was employed by the Philippine Consulate General, Saipan, Commonwealth of the Northern Mariana Islands, (CNMI) United States of America, as the Overseas Welfare Officer of the Overseas Workers Welfare Administration (OWWA) for the Republic of the Philippines. The United States Department of State records show the applicant's A-2 classification was terminated on February 26, 2004. Accordingly, per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States in diplomatic status under 101(a)(15)(A)(ii) of the Act but no longer held that status at the time he filed his application for adjustment on May 22, 2006.

The issue before the AAO in the present case is whether the record establishes that the applicant has compelling reasons that preclude his return to the Philippines, a requirement set forth in section 13(b) of the 1957 Act.

The AAO concurs with the field office director's determination that the applicant failed to establish compelling reasons that prevent his return to the Philippines. 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. What Section 13 requires, however, is that the reasons provided by the applicant demonstrate compellingly that the applicant is unable to return to the country represented by the government which accredited the applicant. Even where the meaning of a statutory provision appears to be clear from the plain language of the statute, it is appropriate to look to the legislative history to determine "whether there is 'clearly expressed legislative intention' contrary to that language, which would require [questioning] the strong presumption that Congress expresses its intent through the language it chooses." *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 433, fn. 12 (1987). The legislative history

supports the plain meaning of the language in Section 13 that those eligible for adjustment of status under Section 13 are those diplomats that have been, in essence, rendered stateless or homeless by political upheaval, hostilities, etc., and are thus *unable* to return to and live in their respective countries.

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).

In an August 20, 2007 affidavit, the applicant recited his past employment as an Overseas Welfare Officer for OWWA, on behalf of the government of the Philippines. The applicant indicated that from 1996 to 1999 he served in Taiwan providing protection and assistance to distressed overseas Filipino workers. The applicant noted that while in Taiwan there was an instance where Filipino workers had to stay in Taiwan for a period of time before being repatriated to the Philippines and that this delay came to the attention of a leftist group in the Philippines who accused the applicant of neglecting the plight of the workers in Taiwan. The applicant declared that his family who had remained in the Philippines started to receive threatening phone calls from unknown persons and that when he returned to Manila, he attempted to conduct a dialogue with the leftist group members but was threatened with physical harm and death. The applicant also noted that while serving at the Philippine Consulate in Saipan, CNMI, he and other officers of the Consulate cooperated with the local and United States authorities on a case of Filipino workers caught attempting to smuggle counterfeit US dollars into the CNMI. The applicant indicated he could sense that those behind the smuggling attempt were very interested in the whereabouts of him and his family. The applicant further indicated that when he attended a conference in Manila in 2003, he was approached to campaign on behalf of [REDACTED] for her 2004 re-election bid but that he declined as he did not believe he should use his official capacity for partisan purposes. The applicant indicated that his superiors at the OWWA Home Office began to move against him and that in 2006 he learned unofficially that they charged him with being insubordinate and of dishonest actions. The applicant also noted that his children spent their formative years outside the Philippines and that it would be difficult for them to adjust to a new environment.

On appeal, in a September 18, 2007 declaration, the applicant reiterates: (1) that while he was serving in Taiwan a high ranking member of a leftist group was told that he harassed and abused her relatives who were working in Taiwan and that he and his family members were subsequently threatened by telephone calls; (2) that while he was serving in Saipan, CNMI, he cooperated with the authorities on a smuggling case and that he received word that some of the individuals in the Philippines that were behind the smuggling attempt wanted to know the whereabouts of him and his family; and (3) that he was approached to assist in [REDACTED] 2004 re-election campaign and that there were veiled threats that he should cooperate in [REDACTED] re-election bid. The applicant adds that while employed in Saipan, he secretly disseminated a memorandum on a proposal to merge the funds of the overseas workers Medicare funds with the Philippine Health Insurance Fund to provide health insurance to minor local officials. The applicant notes that his office superiors, one of whom is now the Secretary of Labor and Employment in the Philippines, found out that he had disseminated this memorandum and withheld the release of his subsistence funds and funds for official operations and later wanted to cancel

his passport and strip him of his status. The applicant reiterates that he learned unofficially in 2006 that he had been charged with insubordination and dishonesty and adds that he faces criminal prosecution in the Philippines. The applicant indicates that he fears the Secretary of Labor and Employment and believes he will exact revenge upon him. The applicant notes his belief that he is a target of the government and will not be able to obtain employment and that his children will face a lot of difficulties. The applicant also fears economic ruin. The applicant further indicates that he and his two children are asthmatics and have allergies caused by pollution and unsanitary conditions, conditions that are prevalent in the Philippines. The applicant adds that he also suffers from diabetes and glaucoma.

The record also includes a November 9, 2006 affidavit and a September 18, 2008 declaration signed by the applicant's wife. The applicant's wife declares: (1) in 1993 her house was robbed and the police apprehended the suspects; (2) in 1998, an individual disguised as a priest requesting donations came to her house and asked about when her husband would return from abroad and she realized that the priest might be from a criminal gang; (3) after the incident in 1998 she started receiving threatening phone calls; (4) while her husband was deployed in Taiwan and accused of neglecting and abusing some workers in his custody – a man came to her house and pointed a gun at her head and then left; (5) she and the children moved to another house in 1999 but the threatening phone calls returned; and (6) when her husband was deployed to Saipan, she and the children went with him and that they now have peace and security, although she understands that people in the Philippines still ask about where they are living. The applicant adds that "if we return, we have to consider not only the threats we received from the unidentified persons who we suspect are supporters of the left leaning group, Migrante, the criminal elements that robbed us, and the vindictiveness and retribution of [her] husband's former boss who is now the Secretary of Labor and Employment."

The record further includes the September 8, 2008 affidavit of _____ the applicant's housekeeper and nanny to his children in the Philippines. Ms. _____ re-states the incidents outlined in the applicant's wife's declaration and adds that while the applicant was working abroad he "was accused by people he was helping of sexually harassing several female workers and being abusive to them. These accusations were aired over the media."

The record also includes excerpts from various sources regarding the re-election of _____ in 2004 and the suspected corruption surrounding the election and the tactics used to engineer Ms. _____ re-election. The record further includes the medical records of the applicant and his two children.

The AAO finds that the applicant has not established compelling reasons that prevent his return to the Philippines. The applicant provides information of three different incidents that occurred while he was employed as an Overseas Welfare Worker for the government of the Philippines and his fear of various individuals or groups resulting from those incidents. The first incident regarding the applicant's work in Taiwan concerns alleged abuses perpetrated by the applicant on workers in his care. The record contains inconsistent information on the circumstances of this incident. The applicant declared that the incident involved delays in repatriating certain workers while the applicant's housekeeper and nanny indicated that the media reported that the circumstances of the incident involved sexual harassment and abuse of female workers. Although there is an indication in the record that the incident was reported in

the media, the applicant has not provided information to substantiate how the incident was reported and has not further detailed if the incident resulted in any disciplinary action against him or whether he was vindicated. The applicant has not provided evidence that he reported the “threatening” actions of the relatives of the individuals who were allegedly abused to police or other government officials. Most importantly, the applicant has not provided substantive evidence that the actions of these individuals provide compelling reasons related to political changes in the Philippine government that render him stateless or homeless or at risk of harm due to political upheavals in the Philippines. Rather this incident relates to a government employee carrying out his duties in a foreign country, not the United States, and upon his return to the country with the same government that employed him, allegedly being harassed and threatened because of his actions. Section 13 is not intended to shield returning diplomats from the lawlessness or actions of criminal individuals in the country that accredited the diplomat. Rather, Section 13 is intended to shield the returning diplomat from the specific actions of the government of the country that accredited the diplomat for his service to the prior regime. The record is insufficient and inconsistent regarding the circumstances of the applicant’s actions in Taiwan and does not provide a compelling reason making the applicant unable to return to the country that accredited him. In fact, the AAO observes that as regards to this incident, the applicant returned and lived in the Philippines subsequent to the allegations raised against him.

Similarly, the AAO does not find that the applicant’s assistance to the United States and local authorities in the discovery and prosecution of counterfeiters and his subsequent fear of the criminal element associated with this crime a compelling reason making the applicant unable to return to the Philippines. The applicant’s indication that he could sense or that he had received word that those behind the smuggling attempt were very interested in him and his family’s whereabouts is not grounded in evidence in the record. The applicant has not provided evidence that substantiates his belief, thus his fear is speculative in nature. Moreover, the evidence of record regarding this incident does not show that the applicant is unable to return because of any action or inaction on the part of the government of the Philippines or other political entity in control in the Philippines.

The record is also insufficient regarding the applicant’s dissemination of a memorandum and the threat of action against him for the dissemination. Although the applicant claims that his subsistence funds were withheld and that his office superiors wanted to cancel his passport and strip him of his status, the record does not contain any documentary evidence substantiating this information. In addition, the record is insufficient to determine whether these actions, if verified, would constitute the administration of disciplinary action against the applicant for revealing government policy. Likewise, the applicant’s indication that he has learned unofficially that he has been charged with insubordination and dishonesty and faces criminal prosecution in the Philippines has not been substantiated in the record. Documentary information regarding possible charges for criminal actions is nonexistent in this record. It is not possible to conclude from the evidence in the record that the actions against the applicant, if verified, would constitute persecutory actions disguised as prosecution rather than the Philippine government’s prosecution of a government official whose actions may have been illegal. The AAO has also considered the applicant’s statements regarding the [REDACTED] government’s desire for the applicant to campaign and organize workers on her behalf and the veiled threats that he should cooperate in [REDACTED] re-election bid. Again, the applicant has not supplied the necessary information to substantiate the veiled threats against him and has not elaborated on the consequences of his failure to

do so. The record does not contain evidence substantiating the applicant's belief that he is a target of the Philippine government. 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 evidence of record does not show that the applicant is unable to return to the Philippines because of any action or inaction on the part of the government of the Philippines or other political entity there as required under Section 13. The AAO finds that the applicant has not submitted substantive evidence showing that he is at greater risk of harm because of his past government employment, political activities or lack thereof, or other related reason. The AAO finds that in this matter the applicant has not established compelling reasons that 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. The AAO does not find that the applicant's circumstances demonstrate that he and his family are unable to return to the Philippines.

The AAO recognizes the U.S. State Department's Country Report on the Philippines, as well as other sources that indicate that the government in the Philippines is subject to corruption and political influence. The AAO also acknowledges that country conditions in the Philippines show a country continuing to struggle with democracy and that the universal freedoms enjoyed by many individuals in the United States are not always available in the Philippines. The AAO has considered the applicant's statements and the statements of his wife regarding the criminal element and their fear of these individuals. However, the record does not provide adequate consistent and substantive evidence demonstrating that the applicant is at greater risk of harm because of his past government employment, political activities or other related reasons. The applicant has not established that he is a target of the government of the Philippines. Moreover, the U.S. State Department has objected to the applicant being granted adjustment of status pursuant to section 13 and has 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 AAO has also considered the applicant and his family's assimilation into the culture of the United States and the applicant and his wife's fear that they would not be able to work or operate a business in the Philippines. However, obtaining employment commensurate with that in the United States and the other general inconveniences and hardships associated with relocating to another country after living in the United States for a period of time are not reasons that make the applicant unable to return to the Philippines as prescribed by Section 13. Similarly, the applicant's medical condition and that of his children are not compelling reasons preventing the applicant's return to the Philippines. The applicant has not provided evidence that he and his children would not be able to obtain medical treatment for their medical conditions of asthma, glaucoma, and diabetes in the Philippines. To reiterate, the applicant has not provided compelling reasons related to political changes in the Philippines 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. The evidence of record does not show that the applicant is unable to return because of any action or inaction on the part of the government of the Philippines or other political entity there as required under Section 13. 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 failed to demonstrate that there are compelling reasons preventing 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 or 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.