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



U.S. Citizenship
and Immigration
Services

A 3

FILE:

Office: WASHINGTON DISTRICT

Date:

APR 22 2010

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. and a subsequently filed appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed. The application remains 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 the son 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 mother after determining that the applicant's mother had failed to demonstrate: that she performed diplomatic or semi-diplomatic duties; that compelling reasons prevent her return to the Philippines; and that her adjustment would be in the national interest of the United States. The field office director denied the applicant's adjustment application on the basis of his mother's ineligibility for benefits under Section 13. The AAO withdrew the field office director's determination that the applicant's mother had not established that she performed diplomatic or semi-diplomatic duties as a Consular Assistant and affirmed the field office director's decision that the applicant's mother had not established that compelling reasons prevented her return to the Philippines and that the applicant's mother's adjustment of status would be in the national interest of the United States.

In a separate decision, the AAO dismissed the motion of the applicant's mother affirming its previous February 20, 2009 decision. As the applicant's eligibility for adjustment under Section 13 derives from the eligibility of his mother, and the applicant has not provided new facts or pertinent precedent decisions separate from those claimed by his mother, the applicant's motion to reopen and reconsider is also dismissed.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

ORDER: The motion is dismissed. The previous decision of the AAO, dated February 20, 2009, is affirmed. The application is denied.