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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



A3

Date: Office: ST. ALBANS FIELD OFFICE

File:

JUN 28 2011

IN RE: Applicant:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, St. Albans, Vermont and a subsequent appeal was remanded by the Administrative Appeals Office (AAO) for consideration as a motion to reconsider. Upon review, the field office director again denied the application and certified her decision to the AAO for review. The matter will be remanded to the Field Office Director for further processing.

The applicant is a native and citizen of Kenya 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 the immediate relative of an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The field office director initially denied the applicant's mother's application for adjustment of status after determining that the applicant's mother had failed to demonstrate that compelling reasons prevent her return to Kenya and that her adjustment to lawful permanent resident would be in the national interest of the United States. The field office director improperly informed the applicant that she did not have the right to appeal her decision. In a late-filed appeal, the applicant, through counsel, questioned the field office director's determination that she did not have appeal rights and included an additional statement from the applicant's mother asserting that compelling reasons prevented her return to Kenya and that her adjustment would be in the national interest of the United States.

In its prior decision, the AAO withdrew the field office director's decision relating to the applicant's mother and remanded the matter for the field office director to treat the late appeal as a motion. The field office director again denied the application determining that the applicant's mother had failed to demonstrate that compelling reasons prevent her return to Kenya and that her adjustment of status to that of a lawful permanent resident would be in the national interests of the United States. The field office director certified her adverse decision to the AAO as instructed. In a separate decision, the AAO again withdrew the field office director's decision relating to the applicant's mother and again remanded the matter for additional processing of the application. As the applicant in this matter is an immediate family member whose eligibility for adjustment under Section 13 is derived from the eligibility of her mother, her application must also be remanded for the field office director to consult with the Secretary of State as set out in section 13 of the Act of September 11, 1957, as amended on December 29, 1981, by Pub. L. 97-116, 95 Stat. 1161. 8 U.S.C. § 1255b(b).

For the reasons discussed above, the matter will be remanded to the field office director to consult with the Secretary of State and then enter a new decision into the record. The field office director may request any additional evidence deemed necessary to assist her with the determination. 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.

ORDER: The director's certification decision is withdrawn; however, because the petition is not approvable, the petition is remanded to the field office director to consult with the Secretary of State and issue a new decision into the record. If the director's decision is again adverse to the applicant, it is to be certified to the Administrative Appeals Office for review.