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

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U.S. Citizenship and Immigration Services

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[redacted]

Date: JUN 28 2011 Office: ST. ALBANS FIELD OFFICE File: [redacted]

IN RE: Applicant: [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:

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 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 application for adjustment of status after determining that the applicant 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 the 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 asserting that compelling reasons prevented her return to Kenya and her adjustment would be in the national interest of the United States.

In its prior decision, the AAO rejected the appeal as untimely filed and remanded the matter for the field office director to treat the late appeal as a motion. Upon review, the field office director again denied the application determining that the applicant 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. Upon review including the applicant's March 21, 2011 statement, we concur with the field office director's ultimate decision; however, the matter must 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 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.