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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: WASHINGTON DISTRICT

MAY 23 2011

File:

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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO is affirmed and 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 an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(i).

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 July 7, 2008 advising that it could not favorably recommend this case as the applicant had not established compelling reasons preventing his return to the Philippines. On appeal, counsel for the applicant asserted that the field office director erred in her decision; the AAO, however, concurred with the field office director's determination.

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. § 1255b(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.

The legislative history for Section 13 reveals that the provision was intended to provide adjustment of status for a "limited class of . . . worthy persons . . . left homeless and stateless" as a consequence of "Communist and other uprisings, aggression, or invasion" that have "in some cases . . . wiped out" their governments. Statement of Senator John F. Kennedy, *Analysis of Bill to Amend the Immigration Nationality Act*, 85th Cong., 103 Cong. Rec. 14660 (August 14, 1957). The phrase "compelling reasons" was added to Section 13 in 1981 after Congress "considered 74 such cases and rejected all but 4 of them for failure to satisfy the criteria clearly established by the legislative history of the 1957 law." H. R. Rep. 97-264 at 33 (October 2, 1981).

As determined previously, a review of the record established the applicant's eligibility for consideration under section 13 of the 1957 Act. The applicant obtained an A-1 visa and began employment with the Consulate General of the Philippines, San Francisco, California as Consul in 1996 continuing to May 2002. The applicant applied for adjustment of status on July 12, 2002. Per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States pursuant to 101(a)(15)(A)(i) of the Act but no longer held that status at the time he filed this application for adjustment on July 12, 2002.

Upon review of the applicant's personal statement, dated July 12, 2002, the applicant's sworn statement before a USCIS immigration officer on December 20, 2006, the applicant's counsel's assertions on appeal, as well as the current country conditions in the Philippines, the AAO determined that the applicant had not provided compelling reasons related to political changes in the Philippines that rendered him as a diplomat and foreign representative "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which accredited him. The AAO found that the record did not include evidence showing that the applicant is at greater risk of harm because of his specific past government employment, political activities or other related reasons, including his involvement in passport fraud detection and prevention in the 1980s and 1990s in the Philippines. The AAO noted that the applicant was transferred to the Philippine Consulate General in Hong Kong to serve as an Administrative Officer from 1984 to 1992 and that upon completion of his tour of duty in Hong Kong, he and his family returned to Manila, Philippines, where they lived for several years before the applicant was transferred to the United States. The AAO also found that although the applicant's fear may be real, it is speculative and that no evidence has been presented that the applicant had been the target of criminals or the Philippine government.

On motion, the applicant provides a statement on the Form I-290B declaring that he and his wife "severed [their] ties with the Philippine government, in particular and [their] country in general when [they] both resigned and retired from government service in May 2002." The applicant noted that he and his wife do not have real property in the Philippines and that they would be burdened with extreme financial, physical, and medical hardship if they were compelled to return to the Philippines. The applicant indicated that it would be difficult for them to find gainful employment because of their age and that they would not be able to afford health insurance especially for his

wife who has diabetes. The applicant noted further that he and his wife had been under the care of a medical doctor since 1996 and 2001, respectively. The applicant submitted copies of medical related documents, a grant deed showing ownership of a residence in California, and other information showing that the couple had established a life in California.

As set forth in our previous decision, 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. Voluntarily severing ties with the Philippines and establishing a life in the United States is not a compelling reason under Section 13. Similarly, the general hardship of relocating to another country is not a compelling reason under Section 13. Further, upon review of the medical documentation submitted on motion, the applicant has not submitted any evidence that either he or his wife would be unable to receive medical treatment in the Philippines. The information provided on motion does not present compelling reasons that prevent the applicant from returning to the Philippines. The applicant has failed to meet his burden of proof in this regard. As the applicant has not established that there are compelling reasons that prevent 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 is eligible for adjustment of status. The applicant has failed to meet that burden. Accordingly, the AAO’s decision to dismiss appeal will be affirmed.

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