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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: NATIONAL BENEFITS CENTER FILE: [REDACTED]

SEP 17 2012

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: 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 Director, National Benefits Center (director). The matter 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 her status to that of a 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 director denied the Form I-485, Application to Register Permanent Residence or Adjust Status, on March 28, 2012. The director determined that the applicant had failed to demonstrate that compelling reasons prevent her return to the Philippines.

The applicant's husband [REDACTED] her son [REDACTED], her daughter [REDACTED] and her daughter [REDACTED] each submitted an Application for Status as Permanent Resident (Form I-485) seeking to adjust status under Section 13. The director issued separate decisions denying these applications. These dependents each filed a separate Form I-290B, Notice of Appeal. The AAO will issue a separate decision for each of the dependents.

On appeal, the applicant claims that she has met the necessary requirements and has presented ample evidence to qualify her and her family for permanent residence in the United States. The applicant asserts that the director failed to adequately address all the evidence she presented; that the director failed to consider the compelling reasons she presented in support of her application; and that the director "narrowly construed the application of Section 13 as amended." The applicant submitted a brief, country condition information on The Philippines, statements and other reports from the Philippines and school records related to her children's education here in the United States.

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. 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.

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).

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, United States 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).

A review of the record establishes the applicant's eligibility for consideration under Section 13. The applicant was admitted in A-2 nonimmigrant status and served as Cultural Officer with the Consulate General of the Philippines in San Francisco, California from July 25, 2002 until September 30, 2008.

The Form I-566, Inter Agency Record of Request, shows that the applicant's A-2 employment was expected to end on September 30, 2008. The record contains a copy of a Certification from [REDACTED] Consulate General of The Philippines, San Francisco, California, stating that the applicant served as Cultural Officer for the Philippine Consulate General, San Francisco, California, from July 25, 2002 until September 30, 2008. The applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status on December 3, 2008. Therefore, the AAO concurs with the director that, per the requirements of Section 13, 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 of her application for adjustment on December 3, 2008.

As a result, the only issue before the AAO is whether the record also establishes that compelling reasons prevent the applicant's return to the Philippines and that her adjustment will serve U.S. national interests.

In this matter, the applicant initially indicated that she does not want to return to the Philippines because of her children's welfare and for them to continue their education in the United States. The applicant in her sworn statement to a USCIS district adjudication officer on March 17, 2009 declares: "going back to our country would pose extreme hardship to us especially my children who have grown up abroad for most of their lives. The current political, economic, social and environment factors in the Philippines are problems we see. My children have grown accustomed to living in a safe, secure and clean environment and they can get good education in the United States." The applicant also stated that she would like to remain in the United States for family unity because most of her immediate family members and close relatives reside in the United States. The applicant indicated that she is concerned about the insecurity in the Philippines and the employment situation in the Philippines.

On appeal, the applicant states that she does not want to return to the Philippines because of the presence of terrorist groups in the Philippines that are "causing national violence. Killings/murder, kidnapping, etc." and the continuing threat and harassment by these terrorist groups against innocent civilians. The applicant indicates that one of the terrorist groups, the [REDACTED] has targeted her spouse and his family in the Philippines and that they have "continuously threatened, harassed and conducted overt acts of aggression" against her spouse and his family in the Philippines, because of her spouse's past employment and his activities against the group when he served as an Agent of the [REDACTED] Department of Justice of the Philippines, prior to their marriage in 1990.

In support of these assertions, the applicant submitted a statement from her spouse, dated June 21, 2012. In that statement, the applicant's spouse claims that he became a target of [REDACTED] because in 1988, he persuaded his cousin (a former member of the [REDACTED]) to leave the group. He claims that thereafter, the group became aware of his action and the fact that he worked for [REDACTED] and they decided to harm him or his family. The applicant's spouse claims that in late 2001 or early 2002, a former neighbor informed him that armed strangers were visiting his former residence at [REDACTED] Philippines, asking for his whereabouts.¹

The applicant's spouse also claims that on February 10, 2012, the car of his brother-in-law which was parked in front of his previous residence at the above address was "peppered with bullets by unidentified persons." Additionally, the applicant's spouse states that while serving as an Agent for the [REDACTED] he was involved in the investigation of several high profile criminal activities involving former government and military officials, which resulted in the prosecution and imprisonment of

¹ It is noted that the applicant's spouse left his position with the [REDACTED] after he and the applicant were married in 1990. In 1992, the applicant was assigned to the [REDACTED], and she and her family moved to Canada from 1992 to 1999. The applicant and her family briefly returned to the Philippines and in July 2002, they left for the United States to take on her position as a Cultural Officer at the [REDACTED]. The applicant and her family have remained in the United States since 2002.

some of the officials. He claims that friends of some of these officials have been asking for his whereabouts because they “want to get even with me.” The applicant also submitted a copy of a police blotter relating to the car shooting incident noted above; witness statements from the Philippines; copies of news articles related to threats, kidnapping and killings of soldiers and civilians by [REDACTED] and [REDACTED] and a January 5, 2012, Travel Warning issued by the U.S. Department of State, Bureau of Consular Affairs, warning United States citizens of the risks of terrorist activities in the Philippines.

The AAO notes the country condition information in the record and acknowledges the risks of violence against individuals by terrorist groups operating in the Philippines. The applicant, however, has not provided substantive evidence that she and her family would be targeted by these groups because of her past government employment as a consular officer with the Consulate General of the Philippines. The applicant has also failed to provide substantive evidence that her spouse has been and continues to be targeted by terrorist groups in the Philippines because of his past employment and activities as an Agent with the [REDACTED]. The AAO notes that the applicant had previously indicated that she does not believe that she or any member of her family would be persecuted for any reason as evidenced by her statement made under oath in February 2009. The AAO also notes that while the applicant’s spouse claims that he was and continues to be targeted by NPA and other past government officials because of his employment and activities with the NBI; the evidence of record does not support these claims. The AAO is aware of the current country conditions in the Philippines but finds that the applicant has not provided probative evidence demonstrating that she would be a target of or would be at greater risk of harm because of her past government employment, political activities or other related reasons. 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 record is insufficient to establish that the applicant in her role as a returning diplomat would be at greater risk of harm because of her past government employment, political activities or other related reason.

As referenced above, 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.

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. In this matter, the applicant initially expressed her desire to remain in the United States so that her children will continue their education and for her to be with her immediate family members and relatives here in the United States. In addition, the applicant stated that she wants her family to remain in the United States where “we will find gainful employment, peace and order and security.” It is only on appeal that the applicant amended her claim to include her fear of harm by terrorist groups and other individuals based on her spouse’s past government employment. Again, however, the applicant has failed to provide credible evidence to establish that her spouse’s past government employment has exposed and continues to expose her family to a greater risk of harm upon their return to the Philippines. In her February 3, 2009 interview, the applicant did not express fear of harm based on her spouse’s past employment or activities in the Philippines. Rather, she stated under oath that neither she nor any member of her family had been threatened and that they would not be subjected to persecution if she were to depart the United States for the Philippines.

In this matter, the applicant has expressed her desire to remain in the United States but has not demonstrated that she is unable to return to the Philippines based on compelling reasons related 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 acknowledges the hardships associated with relocating to the Philippines at this time. However, general inconveniences and hardships associated with relocating to another country and the desire to remain in the United States are not compelling reasons under Section 13. It is also noted, however, that the State Department has objected to the applicant being granted adjustment of status and 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), dated August 17, 2010. The AAO therefore concludes that the applicant has failed to meet her burden of proof in demonstrating that there are compelling reasons that prevent her return to the Philippines. As the applicant has failed to demonstrate that there are compelling reasons preventing her 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. She has failed to establish that there are compelling reasons preventing her 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 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.