

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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

A 3



DATE: Office: NATIONAL BENEFITS CENTER FILE: 
IN RE: **SEP 17 2012** 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 Director, National Benefits Center and 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 29, 2012. The director determined that the applicant had failed to demonstrate that compelling reasons prevent her return to the Philippines. The director also noted that the Department of State issued its opinion on August 17, 2010, advising that it could not favorably recommend the applicant's adjustment of status to that of a lawful permanent resident because the applicant did not present or establish compelling reasons why she is unable to return to the Philippines.

The applicant's husband [REDACTED] her daughter [REDACTED] and her son [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 dependent 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 states that she was diagnosed with breast cancer and is receiving treatment and that going back to the Philippines will hamper her chance to get better and improve her quality of life. The applicant requests that the AAO reconsider her application on humanitarian grounds. The applicant also submits medical records relating to her treatment.

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/her 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 status and served as a Consular Assistant with the Consulate General of The Philippines in San Francisco, California, from April 24, 2001 to June 30, 2008.

The Form I-566, Inter Agency Record of Request, shows that the applicant's A-2 employment was expected to end on June 30, 2008. The applicant submits a certification dated July 1, 2008, from [REDACTED] Consul General, Consulate General of the Philippines, San Francisco, California, certifying that the applicant served the Consulate as a Foreign Service Staff Officer III as a Consular Supervisor and Signing Officer from April 24, 2001 to June 30, 2008. The applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status on July 23, 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 July 23, 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.

On appeal, the applicant states that she was diagnosed with breast cancer and is receiving treatment and that going back to the Philippines will hamper her chance to get better and improve her quality of life. At her adjustment interview on February 3, 2009, the applicant indicated that she does not believe that she or any member of her family would be subject to persecution if required to depart the United States. In a statement in support of the Form I-485 application, the applicant stated that she was able to "hurdle" her breast cancer because of the advanced treatment and medication given to her at [REDACTED] Cancer Center and [REDACTED] Center. She stated that her eldest son was diagnosed with Non-Hodgkin's Lymphoma and was treated in Highland Hospital of Alameda County. The applicant also states that she and her son are still being monitored by their doctors and that transferring her family back to the Philippines would be very difficult due to their health conditions. The applicant further states that her children are enrolled in school in California and doing well and that her husband has a very good paying job with benefits, which she does not want him to give up by returning to the Philippines. The applicant contends that given her husband's age and the present global economic crisis, going back to the Philippines will make it hard for him to find a decent job that will support their family and the additional medical expenses for her and her son.

The AAO notes that the medical records submitted by the applicant establishes that she has a serious medical problem for which she has received and continues to receive treatment, and that her eldest son also has medical problems. We also note that the documentation in the record shows that the applicant's spouse has a good paying job here in the United States and we acknowledge that the applicant and her family would experience hardships if they relocated to the Philippines. However, 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 general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13.

The AAO further notes that the applicant stated at her adjustment interview on February 3, 2009 she and her family would not be subjected to persecution if she were to depart the United States for the Philippines. The applicant has not claimed or provided evidence demonstrating that she is at greater risk of harm because of her past government employment, political activities or other related activities. The AAO also notes that the State Department has recommended that the applicant's adjustment of status be denied because the applicant did not present or establish compelling reasons

why she is unable to return to the Philippines. *See Interagency Record of Request (Form I-566), dated August 17, 2010.*

Based on the evidence of record, the AAO 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. The applicant has failed to demonstrate that the government of the Philippines will not allow her return to that country or that her past employment as a Consular Assistant with the Philippines Consulate General in San Francisco, California, places her and her family in danger and renders them unable to return to the Philippines. Accordingly, the applicant has failed to demonstrate that she or any member of her immediate family have compelling reasons as contemplated under Section 13 that prevent them from returning 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.