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



U.S. Citizenship
and Immigration
Services

Date **APR 03 2013**

Office: NATIONAL BENEFITS CENTER

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: 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,

A handwritten signature in black ink, appearing to read "Ron M. Rosenberg".

Ron M. Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, National Benefits Center and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed. The previous decision will be affirmed and the application will remain 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 the immediate relative of 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 application for adjustment of status of the applicant's spouse after determining that she had failed to establish that compelling reasons prevent her return to the Philippines. *Decision of Center Director*, dated September 17, 2012. The director denied the applicant's adjustment application on the basis of his spouse's ineligibility for benefits under Section 13. In a separate decision, the AAO dismissed the appeal of the applicant's spouse on the grounds that she failed to establish that compelling reasons prevent her return to the Philippines as required under Section 13. As the applicant's eligibility for adjustment under Section 13 derived from the eligibility of his spouse, and the applicant had not asserted compelling reasons separate from those claimed by his spouse, the AAO also determined that the applicant was ineligible for adjustment of status.

On motion, the AAO affirmed its previous decision that the applicant's spouse had not established that compelling reasons prevent her return to the Philippines. The AAO did not reach the issue regarding whether the applicant's spouse's adjustment of status would be in the national interest of the United States. As the applicant's eligibility for adjustment under Section 13 derives from the eligibility of his spouse, and the applicant has not provided new facts or pertinent precedent decisions separate from those claimed by his spouse, the AAO affirms its previous decision that the applicant is ineligible for adjustment of status.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. 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.

ORDER: The previous decision of the AAO, dated September 17, 2012 is affirmed. The application remains denied.