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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

DATE: **DEC 09 2013** Office: NATIONAL BENEFITS CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Permanent Resident Pursuant to Section 13 of the Immigration and Nationality Act of 1957, Pub. L. No. 85-316, 71 Stat. 642, as amended.

ON BEHALF OF APPLICANT:  
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

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

Ron M. Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director (director), National Benefits Center. 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 lawful permanent resident under section 13 of the Act of 1957 ("Section 13"), Pub. L. No. 85-316, 71 Stat. 642, as amended, 95 Stat. 1611, 8 U.S.C. § 1255b, as the dependent child of 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 director denied the application for adjustment of status after determining that at the time the applicant applied for adjustment under Section 13, the applicant's father, Frederico Honrade, was still maintaining diplomatic status; thus was not statutorily eligible to apply. The director also noted that the U.S. Department of State confirmed that the applicant's father is currently maintaining active diplomatic status and that he was in diplomatic status at the time the applicant filed for adjustment of status.<sup>1</sup> See *Decision of the Director*, dated March 12, 2013.

On appeal, counsel for the applicant asserts that the applicant was 29 years old at the time of filing her application and therefore did not fall under the definition of a dependent alien.<sup>2</sup> Counsel contends that as the applicant no longer qualified for dependent status she was eligible to apply for adjustment of status pursuant to section 13. See *Form I-290B, Notice of Appeal or Motion*, dated April 5, 2013.

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 Attorney General 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 Attorney General 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 Attorney General, in his discretion, may record the alien's

<sup>1</sup> See Form I-566, Interagency Record of Request.

<sup>2</sup> The record reflects that the applicant's father was admitted into the United States as a G-1 nonimmigrant

lawful admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

8 U.S.C. § 1255(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.

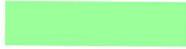
In addition, an applicant for adjustment of status under Section 13 must not be maintaining diplomatic status in order to apply for adjustment under Section 13; thus, his or her status must be terminated prior to the date on which the adjustment application is filed. Pursuant to 8 C.F.R. § 214.2(a), an alien admitted under section 101(a)(15)(A)(ii) or 101(a)(15)(G)(i) or (ii) of the Act maintains that status "for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status." Thus, the authority to determine the date of termination of status under section 101(a)(15)(A)(i) of the Act rests exclusively with the State Department. An application for adjustment of status under Section 13 filed while the applicant is maintaining diplomatic or semi-diplomatic status is properly denied. However, denial of the application on this ground does not preclude the applicant from filing a new application once the requirement for applying – failure to maintain status – has been met.

In this matter, the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on May 27, 2010. On that date, her father through whom she derived her G-2 classification as a dependent,<sup>3</sup> was working as a Chauffeur for the [REDACTED] in a nonimmigrant G-1 classification.<sup>4</sup> The record shows that the applicant's father is still working for the [REDACTED] and that he is still in active diplomatic status and that his status has not been terminated. Thus, when the applicant filed her Form I-485, on May 27, 2010, the individual through whom she had derived her G-2 classification was not eligible to apply for section 13 adjustment of status. As the applicant's eligibility to apply for section 13 adjustment is only available through her father's eligibility, the director properly determined that the applicant was not eligible to apply for adjustment of status pursuant to section 13 of the Act on May 27, 2010.

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<sup>3</sup> Section 101(a)(15) of the Act defines the term "immigrant" as every alien except an alien who is within one of the following classes of nonimmigrant aliens: (A)(ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the *members of their immediate families*. [Emphasis added.]

<sup>4</sup> The record reflects that the applicant's father has maintained his G-1 status since September 8, 1998.



Counsel's contention that the applicant's age places her outside the definition of a dependent as provided under 8 C.F.R. § 214.2(a), and therefore eligible for adjustment under Section 13 is without merit. The applicant's age or marriage has no bearing on her eligibility under Section 13. As the applicant entered the United States as an immediate family member of an alien accorded G-1 classification pursuant to section 101(a)(15)(G)(i) of the Act and the principal alien, her father, had not terminated his G-1 classification as of May 27, 2010, the applicant as the derivative alien of her father's classification also was not eligible to apply.

As the applicant was not statutorily eligible to apply for adjustment of status pursuant to section 13 on May 27, 2010, the issues of the applicant's father's work and whether his work constituted diplomatic or semi-diplomatic duties and whether the applicant has established compelling reasons that prevent her return to the Philippines will not be addressed.

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.