

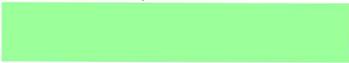


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: FEB 05 2012 Office: NATIONAL BENEFITS CENTER 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,


Ron M. Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, National Benefits Center (director). The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed. 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 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. The AAO issued separate decisions dismissing each dependent's appeal. Only the applicant's husband [REDACTED] has filed a motion to reconsider. The AAO will issue a separate decision for the applicant's husband.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision

On motion, the applicant provides a statement on the Form I-290B stating that she has cancer, that the cancer has metastasized and that returning to the Philippines will amount to a "death sentence for me." The applicant also states, "My condition is not getting better and stopping my treatment during this time would put me and my health in greater danger." The applicant further states that her husband is the sole provider in the family and that "going back to the Philippines during this present global economic crisis with no possible job and no insurance will be a great burden to me and my family." The applicant submitted copies of medical records relating to her cancer treatment and requests that the AAO reconsider her application.

Upon a review of the medical records submitted by the applicant on motion, the AAO notes that the applicant has breast cancer, a serious medical illness and that she is receiving treatment from health

care professionals in the United States. The AAO also notes that the evidence of record shows that the applicant's spouse has a good paying job here in the United States and that the applicant and her family would experience hardships if they relocated to the Philippines. However, the purpose of Section 13 is to offer protection to those individuals who are unable to return to the State that accredited them due to changes in that State government and because they would be targeted for their past specific role in working for that State. 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 generally not regarded as compelling reasons under Section 13.

Based on the evidence of record, the AAO finds that the applicant has failed to meet her burden of proof in demonstrating that there are compelling reasons within the meaning of Section 13 that prevents her return to the Philippines. On motion, 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. The AAO acknowledges the serious nature of the applicant's illness, but as previously discussed, her illness alone, does not constitute compelling reason within the meaning of Section 13. Further, the applicant has not submitted any evidence that she would be unable to receive medical treatment in the Philippines. The applicant has failed to meet her burden of proof in this regard. As the applicant has not established that there are compelling reasons that prevent 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 AAO's decision to dismiss appeal will be affirmed.

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