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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: **NOV 06 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:

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, 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 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 amended, 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 application for adjustment of status after determining that the applicant (1) filed an adjustment of status application while he was still maintaining diplomatic status, and (2) he had failed to establish compelling reasons that prevent his return to the Philippines. The director also noted that on January 9, 2013, the U.S. Department of State issued its opinion recommending that the applicant's adjustment application be denied because the applicant presented no compelling reasons why he cannot return to the Philippines. *Decision of the Director*, dated February 1, 2013.¹

On March 5, 2013, counsel for the applicant filed a Form I-290B, Notice of Appeal or Motion. Counsel indicated on part 2 of the form that he was appealing the decision of the director issued on February 1, 2013 and he provided the receipt numbers for the principal and his two dependents. At part 3 of the form, counsel asserts that the director's decision to deny the application of the applicant and his family is premised on mistaken factual conclusions and faulty analysis and contends that the applicant and his family would experience extraordinary hardships if they were forced to return to the Philippines. In his brief in support of the appeal, counsel indicated that the brief is in support of the appeal of the applicant and his two dependents. The record does not contain a separate Form I-290B for each of the applicant's dependents.²

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

¹ The director also denied the application of the applicant's spouse, [REDACTED] and his son [REDACTED]. However, only the applicant has filed a Form I-290B, appealing the director's decision.

² The AAO shall treat the Form I-290B as an appeal relating to the applicant alone and not the two dependents. The applicant bears the burden of completing the Form I-290B accurately and according to its instructions. See 8 C.F.R. § 103.2(a)(1). For each adverse decision, an applicant must submit a separate Form I-290B and associated fee. See 8 C.F.R. § 103.3(a)(1).

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.

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 U.S. Department of State. 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 record reflects that the applicant was admitted in A-2 nonimmigrant status and served as [REDACTED] at the Consulate of the Philippines in Chicago, Illinois, from January 2, 1996 until his term was terminated by the U.S. Department of State on September 16, 1999. The record reflects that the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status on July 7, 1999. When the applicant filed the Form I-485, on July 7, 1999, he was maintaining diplomatic status at the time and was therefore not eligible to apply for adjustment under Section 13 on July 7, 1999. Accordingly, the AAO finds that the director properly determined that the applicant was not eligible to apply for adjustment of status pursuant to section 13 of the Act on July 7, 1999.

The AAO also concurs with the director's determination that the applicant had failed to establish compelling reasons that prevent his return to the Philippines.

In an undated statement submitted in support of the application, the applicant stated that he and his family came to the United States to have a chance for a better life and would like to remain in the United States "to continue the life we have established here." The applicant also stated that his family would face "immense hardship" if they returned to the Philippines because his children have become acclimated to the United States as they have spent most of their lives in the United States and will have difficulty adjusting to the social and academic environment in the Philippines due to the language barrier. Additionally, the applicant stated that he will struggle economically because he will not be able to secure a good paying job in the Philippines.

At his adjustment of status interview on December 10, 2007, the applicant stated under oath before an immigration officer that he cannot return to the Philippines because of the financial hardship he and his family would face there, and his and his family's medical conditions. On appeal, counsel asserts that the applicant and his family have health conditions for which they receive good medical care in the United States, and due to the lack of quality healthcare in the Philippines, the medical condition of the applicant and his family could worsen. Counsel also states that the applicant will be unable to pay for medication for himself and his family because the applicant and his spouse will not be able to find employment in the Philippines at their ages, and the "very severe economic crisis currently unfolding in the Philippines" will prevent them from supporting themselves or providing for their family.

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 and 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 legislative history of Section 13, including the 1981 amendment adding the term "compelling reasons," 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.

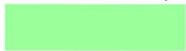
What Section 13 requires is that the reasons provided by the applicant demonstrate compellingly that the applicant is unable to return to the country represented by the government which accredited the

applicant. The AAO finds that a review of the totality of the Section 13 legislative history supports the plain meaning of the language in Section 13 that those eligible for adjustment of status under Section 13 are those diplomats that have been, in essence, rendered stateless or homeless by political upheaval, hostilities, etc., and are thus *unable* to return to and live in their respective countries.

The AAO has reviewed the applicant's statements, counsel's brief on appeal and country condition information submitted on appeal. The AAO notes the applicant's desire to remain in the United States for the continued education and general wellbeing of his family, however, such reasons are not considered compelling within the meaning of section 13. By the same token, the applicant's desire to remain in the United States so that he and his family can continue to receive medical treatment, for his and his spouse's continued employment in the United States and for a better life for his family, are not considered compelling reasons as required under Section 13. As indicated above, 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. In this matter, the AAO finds the record insufficient to establish that the applicant in his role as a returning diplomat would be at greater risk of harm in the hands of the government or other entities there because of his past government employment, political activities or other related reason. The evidence of record in this case does not establish that the applicant is unable to return to the Philippines because of any action or inaction on the part of the government of the Philippines or other political entity there as required under Section 13.

The AAO acknowledges that the Philippines is a country with a high poverty rate and there is a lack of security in some parts of the country due to violence exercised by terrorist groups and other anti-government factions in the country. The AAO also acknowledges the hardships the applicant's children may encounter in relocating to the Philippines after a prolonged absence from the country. However, the general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The applicant has provided no substantive evidence to establish that he and his family would be targeted by the terrorist and/or anti-government groups because of his past government employment, political activities or other related reasons. Also, the general threat of terrorism is not a sufficiently compelling reason under Section 13 as the threat is directed to the general population and not specifically to the applicant as a returning diplomat. 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)). It is also noted that the U.S. Department of State has recommended that the application be denied as the applicant had failed to provide compelling reasons that prevent his return to the Philippines. See Interagency Record of Request (Form I-566). The AAO, therefore, concludes that the applicant has failed to meet his burden of proof in demonstrating that there are compelling reasons that prevent his return to the Philippines. As the applicant has failed to demonstrate that there are compelling reasons preventing his return to the Philippines, the question of whether the adjustment of status of the applicant would be in the national interest of the United States need not be addressed.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. He has failed to establish that there are compelling reasons that preclude his 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 he or 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.