

(b)(6)

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: SELF-REPRESENTED

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 Administrative Appeals Office (AAO) dismissed a subsequently filed appeal and a motion to reconsider. The matter is now before the AAO on a second motion to reconsider. The motion will be dismissed, and the application will remain 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 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 had failed to demonstrate that compelling reasons prevent her return to the Philippines. The director also noted that the U.S. Department of State issued its opinion on January 4, 2011 recommending that the applicant's request for adjustment of status in the United States be denied because the applicant did not show compelling reasons why she and her family cannot return to the Philippines. *Decision of the Director*, dated March 28, 2012.<sup>1</sup>

On September 17, 2012, the AAO affirmed the director's decision that the applicant had not established compelling reasons why she and her family cannot return to the Philippines. On April 3, 2013, the AAO dismissed the applicant's motion to reconsider and the applicant has filed a second motion to the AAO requesting that the AAO reconsider its April 3, 2013 decision.

On the current motion, the applicant asserts that the AAO abused its discretion by concluding that the applicant did not submit substantive evidence to demonstrate compelling reason why she is unable to return to the Philippines. The applicant claims that the AAO failed to examine the evidence that she had submitted, which shows that her husband and her husband's family have been targeted by the group, [REDACTED] because her husband "acted against the [REDACTED] recruitment activities." The applicant does not submit any new evidence or facts to demonstrate that her husband and her family are at risk in the hands of the [REDACTED]. On appeal, the applicant relies on previous documents she had submitted in support of her application, which have been reviewed and considered by the AAO in reaching its decision on April 3, 2013. In addition, the applicant refers to unpublished decisions by the AAO in support of the current motion to reconsider.

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

<sup>1</sup> The director also denied the application of the applicant's spouse, [REDACTED]. The applicant's spouse has filed a separate Form I-290B, Notice of Appeal or Motion, requesting the AAO to reconsider its previous decision. The AAO will issue a separate decision to the applicant's spouse.

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.

The AAO has reviewed all the evidence submitted by the applicant and finds it insufficient to overcome the grounds of our previous decisions. As set forth in our previous decision, 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 applicant has failed to provide credible and probative evidence to establish that her husband has been and is still being targeted by the [REDACTED] because of his prior government employment, political activities or other related grounds. The applicant claims that the [REDACTED] are after her husband because her husband "acted against the [REDACTED] recruitment activities" but failed to submit credible and probative evidence to demonstrate that she and her family are at greater risk if they returned to the Philippines. The applicant has not provided credible and probative evidence of specific threats against her husband by the [REDACTED]

The applicant has failed to submit credible and probative evidence to establish that she and her family are at greater risk of harm from [REDACTED] or other terrorist groups in the Philippines because of her diplomatic duties at the Consulate General of the Philippines in San Francisco, political activities or other related reasons. 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)). The applicant does not submit any pertinent precedent decisions to establish that the AAO's prior decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy or based on the evidence of record at the time of the initial decision. The applicant fails to establish that the decision was an incorrect application of the law by pertinent precedent decisions, or establish that the director or the AAO misinterpreted the evidence of record.

The applicant cites an unpublished decision by the AAO in which the AAO determined that the "compelling reasons" standard is a different standard than the persecution standards applicable in asylum or withholding of removal adjudications, but that a reasonable persecution in the country represented by the government that accredited an applicant for adjustment of status under section 13 is, in most cases, strong evidence that compelling reasons prevent his or her return there. The applicant has furnished no evidence to establish that the facts of the instant case are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. The applicant in this case has presented no evidence to establish that she and her family are at risk of harm from the government of the Philippines that

accredited her. Based on the evidence of record, the applicant has failed to satisfy the requirements of a motion to reconsider. Accordingly, the motion to reconsider is dismissed.

The eligibility for relief pursuant to Section 13 is limited and ineligibility for section 13 relief does not preclude the applicant from pursuing other benefits provided under the immigration laws of the United States. In this matter the information submitted on motion does not include further testimonial or documentary evidence that establishes that the applicant is at greater risk of harm because of her past government employment, political activities or other related grounds. There is no substantive evidence of a specific threat against the applicant or her family. The applicant has failed to establish that she and her family would be subjected to threats or would be at greater risk of harm from the Philippine government due to political changes in the Philippines 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. The information submitted on motion does not establish that the applicant is precluded from returning to the Philippines because of any action or inaction on the part of the government of the Philippines or that she or her family would be subjected to harm as required under Section 13. Accordingly, the AAO's previous decisions remain undisturbed.

It is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The applicant has not sustained that burden. Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The previous decision of the AAO, dated September 17, 2012 and April 3, 2013, are affirmed. The application remains denied.