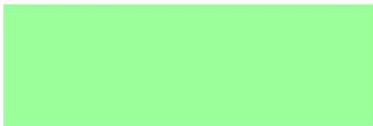




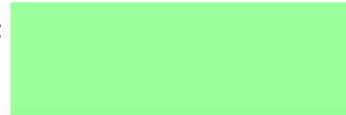
U.S. Citizenship
and Immigration
Services

(b)(6)

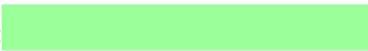


Date: Office: NATIONAL BENEFITS CENTER File:

AUG 25 2014



IN RE: Applicant:



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.

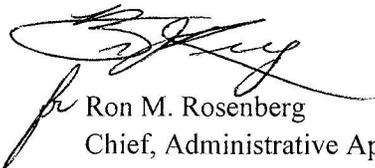
ON BEHALF OF APPLICANT: SELF-REPRESENTED

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,



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 first and second motion to reconsider. The matter is again before the AAO on a third motion to reopen and 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, 2012.¹

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 first motion to reconsider. On May 3, 2013, the applicant filed a second motion to the AAO requesting that the AAO reconsider its April 3, 2013 decision. On November 6, 2013, the AAO dismissed the applicant’s second motion to reconsider.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) 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 USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On the current motion, filed on December 9, 2013, the applicant does not address the AAO’s grounds for dismissal. The applicant claims, however, that “new evidence” amounts to compelling reasons why she is unable to return to the Philippines. She states that the devastation caused by Typhoon Haiyan in November 2013 amounts to “new evidence” of “other reasons” that renders her homeless and demonstrates why she is unable to return to her home. The applicant submits various news reports of the damage caused by Typhoon Haiyan, as new evidence or facts to demonstrate that her husband and her family are at risk if they return to the Philippines.

¹ 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.

The motion does not qualify for consideration under 8 C.F.R. § 103.5(a)(3) because the applicant did not allege that the director and the AAO made an erroneous decision through misapplication of law or policy, or provide precedent decisions to support such a claim, in determining that the applicant failed to establish compelling reasons why she cannot return to the Philippines.

Even if the instant motion could be reopened and the evidence of typhoon damage considered as “new evidence,” the AAO would uphold its November 6, 2013 decision. A review of the record and the AAO’s June 28, 2013 decision demonstrates that the AAO addressed each of the points raised on the previous motion to reopen the AAO’s September 17, 2012 decision and the applicant has not provided any new facts, additional evidence, or precedent decisions to overcome these findings. The “new evidence” provided consists of news reports of damage caused by Typhoon Haiyan in the Tacloban region of the Philippines in November 2013. This information does not establish that the applicant is precluded from returning to the Philippines because she or her family would be subjected to harm or because of any action or inaction on the part of the government of the Philippines as required under Section 13.

Section 13 requires that an applicant for adjustment of status under this provision demonstrate “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. Desiring to establish a life in the United States is not a compelling reason under Section 13. Similarly, the general hardship of relocating to another country is not a compelling reason under Section 13. Although unfortunate, the damage caused by Typhoon Haiyan in the Tacloban region of the Philippines, does not amount to compelling reasons that render the applicant unable to return to the country, even though returning may be undesirable or not preferred from the applicant’s perspective. The evidence of typhoon damage does not relate to a compelling reason as required under Section 13, which the AAO need not reiterate here as the requirement has been clearly delineated in its dismissal and the subsequent motions decisions. Eligibility for relief under 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.

A party seeking to reopen a proceeding bears a “heavy burden.” *INS v. Abudu*, 485 U.S. at 110. The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. With the current motion, the movant has not met 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 decisions of the AAO, dated September 17, 2012, April 3, 2013, and November 6, 2013, are affirmed. The application remains denied.