U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: AUG 2 5 2014

Office: NATIONAL BENEFITS CENTER FILE:

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 and the Administrative Appeals Office (AAO) dismissed a subsequently filed appeal and two motions to reconsider. The matter is again before the AAO on a third motion to reopen and reconsider. The motion will be dismissed. The application remains denied.

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 modified, 95 Stat. 1611, 8 U.S.C. § 1255b, as a derivative dependent spouse of 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 of the applicant's spouse after determining that she had failed to establish that compelling reasons prevent her return to the Philippines. *Decision of the Director,* dated March 28, 2012. The director denied the applicant's adjustment application on the basis of his spouse's ineligibility for benefits under Section 13. In a separate decision, the AAO dismissed the appeal of the applicant's spouse on the grounds that she failed to establish that compelling reasons prevent her return to the Philippines as required under Section 13. As the applicant's eligibility for adjustment of status under Section 13 is derived from the eligibility of his spouse, and the applicant did not claim compelling reasons separate from those claimed by his spouse, the AAO also determined that the applicant is ineligible for adjustment of status and dismissed the appeal accordingly.

On April 3, 2013, the AAO dismissed the applicant's motion to reconsider and affirmed its previous decision to dismiss the appeal finding that the applicant had not provided any new facts or pertinent precedent decisions to support the motion.

On May 3, 2013, the applicant filed a second motion to reconsider and relied on the brief his spouse had submitted in support of her own motion to reconsider. The AAO reviewed the evidence submitted by the applicant's spouse in support of her own motion and found it insufficient to satisfy the requirements for a motion to reconsider. On November 6, 2013, the AAO dismissed the second motion filed by the applicant's spouse and affirmed its previous decisions.

On December 6, 2013, the applicant filed the current motion to reopen and reconsider based on the same "new evidence" of damage caused by Typhoon Haiyan in the Tacloban region of the Philippines in November 2013. As the applicant's eligibility for adjustment under Section 13 derives from the eligibility of his spouse, and the applicant has provided no new facts or evidence separate from those submitted by his spouse, the AAO will dismiss the applicant's current motion and affirm its previous decisions.

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. 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.

ORDER: The motion is dismissed. The previous decisions of the AAO are affirmed. The application remains denied.