



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 06 2014 OFFICE: NATIONAL BENEFITS CENTER

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.

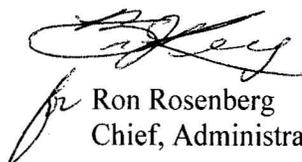
ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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 Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the National Benefits Center Director. The matter is now before the Administrative Appeals Office (AAO) on appeal.¹ 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 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 application for adjustment of status after determining that the applicant had failed to establish that he performed diplomatic, or semi-diplomatic duties, and failed to demonstrate that compelling reasons prevent his return to The Philippines. The director also noted that the Department of State issued its opinion on January 26, 2013, advising that it could not favorably recommend this case as the applicant had not established compelling reasons preventing his return to The Philippines. *Decision of National Benefits Director*, dated March 5, 2013.

On appeal, counsel for the applicant asserts that the director erred in his decision; and, that the applicant has established compelling reasons that prevent his return to The Philippines. Counsel also asserts that the applicant has established that he performed duties in a semi-diplomatic capacity for the [redacted] and the director did not consider the evidence of compelling reasons submitted by the applicant. Counsel contends that the applicant has demonstrated that his heart condition prevents his return to The Philippines and amounts to compelling reasons under Section 13. Counsel submits a brief and additional evidence.

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 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

¹ It is noted that on the Form I-290B, Notice of Appeal or Motion, counsel for the applicant also listed A203 017 351 and A203 017 352, The A-file number of the applicant's dependents whose applications were also denied by the director because the principal applicant's application had been denied. As the record does not reflect separate Form I-290B(s) for his dependents the matter will be considered as an appeal of the principal applicant's denial only.

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.

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 AAO now turns to a review of the evidence of record, including the information submitted on appeal. In making a determination of statutory eligibility, U.S. Citizenship and Immigration Services (USCIS) is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii).

A review of the record established the applicant's eligibility for consideration under Section 13 of the 1957 Act. The applicant last entered the United States on April 29, 2001 as an A-2 non-immigrant to work for the [REDACTED]. His status was terminated on February 28, 2006. The applicant applied for adjustment of status on April 12, 2010. Per the requirements of section 13(a) of the 1957 statute, the applicant was admitted to the United States pursuant to 101(a)(15)(A)(ii) of the Act but no longer held that status at the time he filed this application for adjustment on April 12, 2010.

The record shows that the applicant was admitted under section 101(a)(15)(A)(ii) of the Act. However, the applicant did not perform diplomatic or semi-diplomatic duties. There is no indication in the record that that the applicant performed diplomatic or semi-diplomatic duties. In his sworn statement, the applicant testified that he served as Butler and Driver to the General and [REDACTED]. In his sworn statement on July 23, 2010, the applicant states, generally, that he drove the General and Colonel to "some of their functions," and accompanied them to meetings. The AAO finds that the applicant's duties, as a Butler and Driver to the General and Colonel, were not diplomatic or semi-diplomatic in nature. The AAO concurs with the

director's determination that the applicant has failed to establish that he performed diplomatic or semi-diplomatic duties.

Upon review of the applicant's sworn statement before a USCIS immigration officer on July 23, 2010, the applicant's counsel's assertions on appeal, as well as the current country conditions in The Philippines, the AAO finds that the applicant has not provided compelling reasons related to political changes in The Philippines that rendered him as a foreign representative "stateless or homeless" or at risk of harm following political upheavals in the country represented by the government which accredited him. The record does not include evidence showing that the applicant is at greater risk of harm because of his specific past government employment, political activities or other related reasons, including his employment as a Butler and Driver for the [REDACTED]. By his own sworn testimony before an immigration officer on July 23, 2010, when asked what compelling reason prevents his return to The Philippines, the applicant stated that it is "because of [his] illness of [his] heart attack."

As set forth in the director's 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. 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. The documentation provided does not present compelling reasons that prevent the applicant from returning to The Philippines. The applicant has failed to meet his burden of proof in this regard. As the applicant has not established that there are compelling reasons that prevent his 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. He has failed to establish that there are compelling reasons preventing 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 is eligible for adjustment of status. The applicant has failed to meet that burden.

ORDER: The appeal is dismissed. The application remains denied.