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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



U.S. Citizenship
and Immigration
Services

Date: **JUL 31 2015**

FILE: [REDACTED]
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, National Benefits Center, denied the application to adjust status under Section 13 of the Immigration and Nationality Act (“Section 13”). A subsequent appeal and three motions to reopen and reconsider were dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a fourth motion to reopen and reconsider. The motion will be granted and the previous decision of the AAO will be affirmed.

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 November 6, 2013, we dismissed the applicant’s second motion to reconsider and on August 25, 2014, we dismissed the applicant’s third motion to reopen and reconsider. The applicant has now filed a fourth motion to reopen and 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 current motion to reopen and reconsider the applicant relies on the same evidence of news articles and pictures of devastation caused by a series of typhoons and by tropical storm Fung Wong in 2014 and copies of news articles on the Islamist groups operating in the Philippines, such as Abu Sayyaf and ISIS, which the applicant’s spouse proffered in support of her own motion to reopen and reconsider.

In a separate decision, we granted the spouse’s motion to reopen to consider the evidence submitted on motion. We found that the general threat of insecurity by Islamists or other terrorist groups in the Philippines is not a compelling reason as contemplated by Section 13 the

Act rendering the principle applicant and her spouse unable to return there because the threat is directed to the general public and not specifically to the applicant and her family. We further concluded that the tropical storm damage is not a compelling reason as required under Section 13 because it does not relate to political changes that render diplomats at risk of harm following political upheavals. For these reasons we found that the principle applicant was not eligible for adjustment of status under Section 13 as she had failed to establish that there are compelling reasons preventing her return to the Philippines.

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, we will affirm our previous decision dismissing the appeal.

It is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has failed to meet that burden. Accordingly, our previous decision dismissing the appeal will not be disturbed.

ORDER: The motion is granted and the previous decision of the AAO dismissing the appeal is affirmed. The application remains denied.