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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: WASHINGTON, D.C.

Date:

JUN 05 2008

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:

[REDACTED]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. and is now before the Administrative Appeals Office (AAO) on appeal. 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 demonstrate that compelling reasons prevent her return to the Philippines or that adjustment would be in the national interest. *Decision of Field Office Director*, dated January 3, 2008.

The applicant's husband [REDACTED] and son ([REDACTED]) each submitted a separate Application to Register Permanent Residence or Adjust Status (Form I-485) seeking to adjust status under Section 13 as the applicant's derivative family members. The director issued decisions denying these applications on the basis of the applicant's ineligibility for benefits under Section 13. Counsel has indicated that he is also appealing those decisions. However, there is no evidence in the record showing that a Form I-290B, with accompanying fee, has been filed on behalf of either the applicant's wife or his child as required. Consequently, the only matter before the AAO is the denial of the applicant's application to adjust status.

On appeal, counsel asserts that the applicant and her family members have provided ample evidence of compelling reasons why they are unable to return to the Philippines. *See Counsel's Brief in Support of Appeal* at 2. Counsel contends that the director erroneously applied "an invented requirement" that the applicant demonstrate a fear of persecution in the Philippines. *Id.* at 4. Counsel asserts that the applicant's son, [REDACTED] suffers from asthma, a condition that would be exacerbated by environmental factors common in the Philippines. *Id.* at 5. Counsel observes that there are significant shortcomings in the Philippine health care system. *Id.* Counsel also contends that the decision downplays the severe economic crisis in the Philippines, and the unlikelihood that the applicant and her husband will be able to secure employment there because of their age. *Id.* at 6. Counsel asserts that the applicant has submitted numerous letters attesting to the good character of the applicant and her family and their involvement within their community, all showing that adjustment of status is in the national interest. *Id.* at 6-7. Counsel also observes that the applicant is employed as a teacher and her sons are in "gifted" classes at their school. *Id.* at 7. Counsel has submitted numerous documents in support of the appeal. All of the evidence in the record has been considered in rendering a decision on the appeal.

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 Attorney General 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 Attorney General 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 residence under the Immigration and Nationality Act, and that such action would not be contrary to the national welfare, safety, or security, the Attorney General, in his discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the Attorney General approving the application for adjustment of status is made.

8 U.S.C. § 1255(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. Aliens whose duties were of a custodial, clerical, or menial nature, and members of their immediate families, are not eligible for benefits under Section 13.

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 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 establishes the applicant's eligibility for consideration under Section 13. The applicant was last admitted in A-2 status on June 18, 2001 and served as a Consular Assistant at the Consulate General of the Philippines in Chicago, Illinois until on or around February 1, 2002. *See Form 2008, Notice of Termination of Diplomatic, Consular, or Foreign Government Employment; Form I-566, Interagency Record of Individual Request for Change/Adjustment to, or from, A or G Status; Form I-94, Departure Record; Letter from Emelinda lee-Pineda, Consul General, Consulate General of the Phillipines, Chicago, Illinois, dated January 21, 2002.* Therefore, per the requirements of Section 13, the applicant was admitted to the United States in diplomatic or semi-diplomatic status under 101(a)(15)(A)(ii) of the Act but no longer held that status at the time of her application for adjustment on February 19, 2002.

The AAO acknowledges that the applicant and her family may experience financial and other hardship upon their return to the Philippines, but concludes that this hardship does not constitute compelling reasons under Section 13. As discussed above, 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. The general inconveniences and hardships associated with relocating to another country are not compelling reasons under Section 13. The AAO also acknowledges the contributions made by the applicant and his family to the United States, but concludes that the applicant has failed to meet her burden of proof in demonstrating that there are compelling reasons that prevent her return to the Philippines. It is also noted that the U.S. State Department has objected to the applicant being granted adjustment of status. See *Form I-566*.

For the reasons discussed above, the AAO finds that the applicant is not eligible for adjustment under Section 13. She has failed to establish that there are compelling reasons preventing his return to 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.