



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: JUL 08 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 ON 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](http://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,

*for* 

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 two 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 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.<sup>1</sup>

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 November 6, 2013, the AAO 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, the applicant does not address the AAO’s grounds for dismissal. The applicant however, submits new 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.

A review of the evidence fails to demonstrate that the applicant has satisfied the requirements for a motion to reconsider. The applicant does not allege or provide precedent decision to show that the AAO made an erroneous decision through the misapplication of law or USCIS policy, or

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<sup>1</sup> The director also denied the application of the applicant’s spouse. 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.

demonstrate 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). We will, however, reopen the matter to consider the evidence submitted by the applicant on current motion.

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(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, if they 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 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).

As discussed in our prior decisions, 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.

In this matter, the general threat of insecurity by Islamists or other terrorist groups in the Philippines is not a compelling reason as contemplated by Section 13 of the Act because the threat is directed to the general public and not specifically to the applicant and her family. The general hardship of relocating to another country is not a compelling reason under Section 13. Furthermore, although we acknowledge the devastations caused by a series of typhoons and by tropical storm Fung Wong in 2014 and the inconvenience the applicant may encounter under these conditions, these inconveniences or hardships do 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. As indicated 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 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. Eligibility for relief

under section 13 is limited to these circumstances, but ineligibility for section 13 relief does not preclude the applicant from pursuing other benefits provided under the immigration laws of the United States.

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 her 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 she is eligible for adjustment of status. With the current motion, the applicant has not met 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.