



U.S. Department of Justice

Immigration and Naturalization Service



OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

FILE:



Date:

APR 26 2000

IN RE:



APPLICATION:



IN BEHALF OF APPLICANT:



Identifying information
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Washington, D.C., and is now before the Associate Commissioner, Examinations, 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 a lawful permanent resident under section 13 of the Immigration and Nationality Act (the Act) of 1957, Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(ii) of the Act.

The district director denied the application for adjustment of status after determining that the applicant was still maintaining status at the time he submitted his application for adjustment.

On appeal, counsel asserts that the applicant did not work for the Philippine Consulate after August 16, 1984, the date his resignation was received by the Philippine Consulate General. He argues that documents the district director received from the Department of State indicating that the applicant terminated his status on July 1, 1985 is contrary to other documents in the file. Counsel submits additional evidence.

Section 13 of the Act 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.

Pursuant to 8 C.F.R. 245.3, eligibility for adjustment of status under section 13 of the Act 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 which 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 statute requires that a section 13 applicant must have failed to maintain his or her status under the specified A or G nonimmigrant class. An A or G visa holder is lawfully admitted to the United States and is deemed to be maintaining lawful status so long as the Secretary of State recognizes him or her as being entitled to such status. Termination of recognition of an A or G visa holder's status is committed to the discretion of the Department of State. See 22 C.F.R. 41.22(f).

The record shows that the applicant last entered the United States at [REDACTED] on December 28, 1981, as an A-2 nonimmigrant official and employee of a foreign government. The applicant claimed to have held the position of Foreign Service Staff Officer in the Philippine Consulate General in Houston, Texas, until his resignation on August 16, 1984. On December 4, 1994, the applicant filed an application for adjustment of status to that of a lawful permanent resident pursuant to section 13 of the Act.

On December 15, 1998, a consultation was made with the Department of State on Service Form I-88. On that form, the Department of State indicated on January 7, 1999, that the applicant's official position was Consular Agent at the Consulate General of the Philippines, Houston, Texas, "with PID No. 2046-2883 by Protocol indicating A-1 visa (position was A-2 position)," that the initial date of such status was May 21, 1979, and that such status was terminated on July 1, 1985.

Counsel, on appeal, submits two letters dated June 2, 1999, from the Acting Administrative Officer, Embassy of the Philippines, certifying that the applicant resigned from the Consulate office effective August 16, 1984, and since then he has had no employment relationship with the Consulate or any Philippine government office.

The termination of recognition of an A or G visa holder's status is within the discretion of the Department of State. See 22 C.F.R. 41.22(f). Despite the applicant's claim that his appointment was terminated upon his resignation on August 16, 1984, it is apparent that the Department of State was not notified of the termination of the applicant's A-2 status. Consequently, at the time of his application for permanent residence under section 13, the applicant had not failed to maintain his A-2 status as required under the statute.

Since the applicant is not prima facie eligible for the benefit sought, the issue of compelling reasons and national welfare, safety, or security of the United States, as required by statute, will not be discussed.

Accordingly, the decision of the district director denying the application will not be disturbed, and the appeal will be dismissed.

ORDER: The appeal is dismissed.