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

[redacted]

PUBLIC COPY

FILE: [redacted] Office: New York Date: MAR - 7 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957

IN BEHALF OF APPLICANT:

[redacted]

identifying data deleted to 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

for Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Liberia who is seeking to adjust her status to that of a lawful permanent resident under section 13 of the Act of September 11, 1957, as the spouse of an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(G)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(G)(ii).

The district director denied the application for adjustment of status after determining that the applicants's spouse, who is the principal alien, failed to establish that there are compelling reasons why he was unable to return to Liberia.

On appeal, counsel asserts that the applicant's spouse and his family have shown compelling reasons that demonstrate both that they are unable to return to Liberia, the country represented by the government which accredited the principal alien and the member of his immediate family, and that adjustment of status of the applicant's spouse would be in the national interest.

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.

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. 22 C.F.R. 41.22(f).

The record shows that the applicant's spouse first entered the United States as a nonimmigrant student on August 11, 1973. He was subsequently employed by the Liberian Missions to the United Nations in April 1975, and his status was changed to that of a G-1 nonimmigrant official and employee of a foreign government. He last entered the United States as a G-1 on May 15, 1988. The applicant's spouse held the position of Second Secretary, Permanent Mission of Liberia to the United Nations in New York. The principal alien and his family filed their applications for permanent residence under section 13 on March 27, 1992.

On July 30, 1992, a consultation was made with the United States Department of State (DOS) on Service Form I-88. The principal alien's file, along with a transcript of his eligibility interview was also forwarded to the DOS for review. On April 24, 1995, the DOS found that the principal alien has not provided sufficient evidence to establish that there are compelling reasons why he and his family are unable to return to their homeland. The application of the principal alien was consequently denied by the district director and the Associate Commissioner dismissed a subsequently filed appeal.

Matter of Aiyer, 18 I&N Dec. 98 (Reg. Comm. 1981), held that since the dependent of a principal alien derives benefits from the

principal alien, an applicant for adjustment of status under section 13 of the Act of September 11, 1957 is ineligible for such benefits if he/she is the dependent of a principal alien ineligible for such benefits. The applicant is, therefore, ineligible for the benefits of section 13 of the Act since the principal alien has been found ineligible for these benefits.

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.