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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: Washington, D.C. Date: 13 SEP [illegible]

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.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting 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 Nigeria who is seeking to adjust her 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 the daughter of an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Act.

The district director denied the application for adjustment of status after determining that the applicants's mother was ineligible for the benefits of section 13 and resulted in the denial of her application. He concluded that because the applicant is an accompanying family member, she was, therefore, precluded from deriving any benefits.

On appeal, counsel asserts that at no time did the Service ever request additional information to the Davies family within the 10-year period since the filing of the adjustment applications. While counsel states that he is sending a brief and/or evidence within 30 days, it has been well over 22 months since the appeal was filed and neither a brief nor additional evidence has been entered into the record. Therefore, the record is considered complete.

Counsel has requested oral argument in this case. A request for oral argument must set forth facts explaining specifically why oral argument is necessary. 8 C.F.R. 103.3(b). In this case, no cause for oral argument is shown. Counsel's request for oral argument is, therefore, denied.

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 record shows that the applicant entered the United States on January 19, 1985 as an A-2 (child of a nonimmigrant official and employee of a foreign government). According to the Department of State on Form I-88 dated November 27, 1989, the applicant's father (Gospel Davies) held his official position as Diplomatic Agent, Embassy of Nigeria, Washington, D.C., in A-1 status from January 19, 1985 until April 27, 1989, when his status was terminated. On May 12, 1989, Mr. Davies and his family filed applications for adjustment of status to permanent residence under section 13 of the Act. While the record of proceeding is devoid of a death certificate, a letter from one of Mr. Davies' daughters dated October 27, 1998, states that Mr. Davies passed away in 1994.

The district director reviewed and evaluated the evidence of record, including the sworn statement of Mr. Davies on October 31, 1989, asserting that compelling reasons exist which prevent his return to Nigeria. He determined that while Mr. Davies cited many reasons, he had failed to provide documentation to support them. The district director, therefore, denied the application of Mr. Davies' wife (Malinda Davies) and her family after determining that she and her family have failed to establish both compelling reasons why they are unable to return to Nigeria, the country of accreditation, and why their adjustment would be in the national interest of the United States.

While counsel states that the applicants were never requested to furnish additional information, the applicant had the opportunity to furnish additional evidence on appeal or subsequent to the filing of the appeal over 22 months ago.

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 district director determined that because the applicant is an accompanying family member, she is precluded from deriving any benefits under section 13 of the Act.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.