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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **AUG 25 2006**
(LIN-05-208-50320 relates)

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Travel Document Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. § 1203.

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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 Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China, who seeks to obtain a travel document (reentry permit) under section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1203. The Acting Director denied the application after determining that the application was filed after the applicant had departed the United States. *See Acting Director's Decision* dated March 1, 2006.

Section 223 of the Act provides, in pertinent part, that an alien lawfully admitted for permanent residence who intends to visit abroad and return to the United States to resume that status may make an application for a permit to reenter the United States.

The regulation at 8 C.F.R. § 223.2 states in pertinent part:

(b) Eligibility.

- (1) Reentry permit. Except as otherwise provided in this section, an application may be approved if filed by a person who is in the United States at the time of application and is a lawful permanent resident or conditional permanent resident.

On appeal, the applicant does not dispute the fact that his application for a reentry permit was filed while he was residing in Taiwan. The applicant states that he departed the United States on February 12, 2005, and provides a copy of his passport, which shows an entry into Taiwan on February 14, 2005. The applicant states that this is the first time he applied for a reentry permit and he did not know that he had to be in the United States, since this is not mentioned in the filing instructions. In addition, the applicant states that he has been waiting for a decision for eight months and he cannot travel to the United States without a reentry permit. Finally, the applicant requests that his application be given favorable consideration.

The record of proceeding reveals that the applicant was admitted into the United States as a lawful permanent resident on May 22, 2004. On July 1, 2005, the applicant filed an Application for Travel Document (Form I-131) with Citizenship and Immigration Services (CIS). On September 19, 2005, the Acting Director requested that the applicant provide evidence to establish his actual date of departure from the United States. The applicant responded and the evidence indicates that the applicant departed the United States on February 12, 2005, and was admitted to Taiwan on February 14, 2005. Therefore, the Form I-131 was filed after the applicant departed the United States. In addition, the instructions on the Form I-131 state in pertinent part, "You must be physically present when you file the application" and, therefore, the applicant's claim that he did not know that he needed to be in the United States at the time he filed the Form I-131 is not persuasive. The Act provides no exception regarding the physical presence requirement at the time of filing a Form I-131. Since the application was not filed until after the applicant had departed the United States, the application may not be approved as a matter of law.

If a lawful permanent resident seeks to reenter the United States and does not possess a reentry permit, he or she should contact a United States consulate abroad for further information regarding his or her possible options for return to the United States.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.