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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

DEC 01 2006

(LIN-06-139-50293 relates)

IN RE:

Applicant:



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 United Kingdom, 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 July 25, 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 states that he applied for a reentry permit in August of 2004 while he was still working and living in the United States. In addition, the applicant states that any correspondence that was forwarded to his California address was not received because he already had departed the United States to care for his ill mother but had every intention of returning to the United States.

The electronic database of Citizenship and Immigration Services (CIS) reflect that the applicant filed an Application for Travel Document (Form I-131) on August 12, 2004, under receipt number LIN-04-230-52395. This Form I-131 was approved on January 12 2005, and a reentry permit was issued and forwarded to the address provided by the applicant. On February 4, 2005, the reentry permit was returned as undeliverable and it was destroyed on March 27, 2006. The proceeding, in the present case, is for a Form I-131 filed on April 10, 2006, under receipt number LIN-06-139-50293 and, therefore, the AAO will not discuss the Form I-131 filed on August 12, 2004.

The record of proceeding reveals that on August 25, 2003, the applicant was admitted into the United States as a lawful permanent resident. The record further indicates that the applicant departed the United States on September 8, 2004. The applicant reentered the United States on February 16, 2006, and departed on February 21, 2006. On March 31, 2006, while residing in England, the applicant signed a Form I-131, which was subsequently mailed to the Nebraska Service Center and received on April 10, 2006. On June 15, 2006, 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 21, 2006.

The fact remains that the present Form I-131 was filed after the applicant departed the United States. No exception regarding the physical presence in the United States at the time of filing a Form I-131 is provided

by the Act. 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 eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.