



U.S. Citizenship
and Immigration
Services

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T/L

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FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date: MAY 11 2006

(LIN-03-056-51426 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 Bangladesh 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 February 22, 2005.

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, filed by the applicant's mother, she states that the decision was made without considering the compelling circumstances that forced the applicant to stay in Bangladesh for over a year. The applicant's mother does not dispute the fact that the Form I-131 was filed while the applicant was residing in Bangladesh. She states that the applicant was a minor when he left the United States and did not return within a year because of his brother's illness. In addition, the applicant's mother states that the applicant depends on his parents, both of whom are residing and working in the United States. Finally the applicant's mother states that the separation of the applicant from his family has caused emotional and psychological distress to the family and requests that the application for reentry permit be accepted.

The record of proceeding reveals that on April 15, 2000, the applicant was admitted into the United States as a lawful permanent resident. The applicant filed a Form I-131 with Citizenship and Immigration Services (CIS) on December 10, 2002, while residing in Bangladesh. The record indicates that the applicant departed the United States on June 15, 2000. Regardless of unexpected circumstances, the application was filed after the applicant departed the United States. The Act provides no exception regarding the physical presence in the United States 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/she should contact a United States consulate abroad for further information regarding his/her possible options for return to the United States. The applicant may be eligible for a SB-1, returning resident visa or his parents may have to file a Petition for Alien Relative (Form I-130) on behalf of the applicant.

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.