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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **NOV 20 2006**  
(LIN-05-256-53718 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 Canada, 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 7, 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 initially filed a Form I-131 in September 2003. In addition, the applicant states that since he did not hear from Citizenship and Immigration Services (CIS) he refiled a Form I-131 in September 2005. Furthermore, the applicant states that although he moved to Canada for employment purposes, he had no intention of abandoning his Lawful Permanent Resident (LPR) status. Finally, the applicant requests that the AAO reconsider the original decision and grant him a reentry permit because he has been in compliance with his obligations as an LPR and he intends to return to the United States.

The record of proceeding reflects that the applicant was admitted into the United States as an LPR on June 15, 1989. According to the record of proceeding, the applicant relocated to Canada in May 2001. The applicant states the he submitted a Form I-131 in September 2003 and submits mailing receipts from Canada and a Canadian issued check as evidence. CIS has no record of receiving a Form I-131 from the applicant in the year 2003. The Form I-131 in the present proceeding was filed on September 6, 2005. On appeal, the applicant did not present evidence that he was physically present in the United States at the time he filed the Form I-131. 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 eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.