

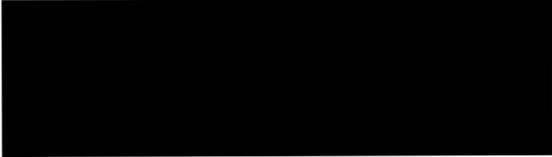
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **NOV 20 2006**
(LIN-06-155-54539 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.

Handwritten signature of Robert P. Wiemann in black ink.

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 Vietnam, 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 concluded that the applicant did not hold valid lawful permanent or conditional resident status at the time the application was filed and denied the application accordingly. See *Acting Director's Decision* dated August 9, 2006.

The applicant completed Part 2, box a, on her Application for Travel Document (Form I-131) that states:

I am a permanent resident or conditional resident of the United States and I am applying for a Reentry Permit.

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 she immigrated to the United States on July 9, 2004 as the spouse of a U.S. citizen. In addition, the applicant states that she is the process of getting an alien resident card. Finally she states that she needs a reentry permit in order to travel to Vietnam in case of an emergency. The applicant submits a copy of her Arrival-Departure Record (Form I-94), a copy of her social security card, a copy of her child's birth certificate and U.S. passport, and proof that she filed an Application to Register Permanent Residence or Adjust Status (Form I-485) with Citizenship and Immigration Services.

The record of proceeding reflects that on July 9, 2004, the applicant was admitted into the United States as the fiancé of a U.S. citizen and not as a spouse of a U.S. citizen as she states in her appeal. In addition, the record reflects that the applicant filed a Form I-485 on September 21, 2004, which is still pending and, therefore, she is not a lawful permanent or conditional resident of the United States. Absent such evidence, the application may not be approved.

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.

As noted above, the applicant has a pending Form I-485 and she may be eligible for advance parole. Therefore, the decision is without prejudice to the filing of a new Form I-131 for advance parole if the applicant completes the appropriate box on the application.

ORDER: The appeal is dismissed.