

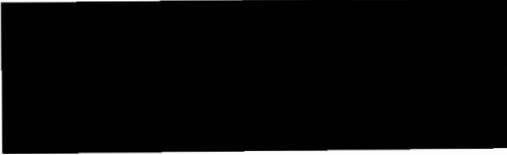


U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER
(LIN-06-148-50480 relates)

Date: OCT 20 2006

IN RE:

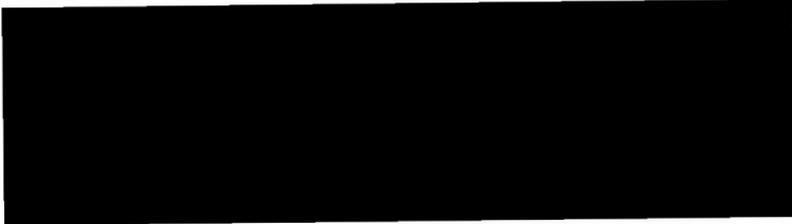
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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 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 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 21, 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.

The record of proceeding reflects that the applicant was admitted into the United States as a lawful permanent resident on August 31, 1979. On April 21, 2006, the applicant filed an Application for Travel Document (Form I-131) with Citizenship and Immigration Services (CIS). The record of proceeding further reflects that the applicant departed the United States on December 31, 2003. Therefore, the Form I-131 was filed after the applicant departed the United States.

On appeal, counsel does not dispute the fact that the application for a reentry permit was filed while the applicant was residing in Vietnam. Counsel states that the applicant had to leave the United States unexpectedly because his father was gravely ill. In addition, counsel states that the applicant remained in Vietnam during his father's recovery and had every intention to return to the United States and maintaining his lawful permanent resident status.

The fact remains that the Form I-131 was filed after the applicant departed the United States. 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 after an absence of one year or more, and does not possess a reentry permit, he/she should contact a United States consulate abroad for further information regarding 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.