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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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I,

[REDACTED]

FILE:

Office: NEBRASKA SERVICE CENTER

Date:

APR 03 2007

(LIN-03-270-53312 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:

[REDACTED]

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 April 25, 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, the applicant's uncle states that the applicant filed a Form I-131 at the same time as her mother and siblings, and under the same facts and circumstances. The applicant's uncle further states that the applicant's family members received reentry permits and he cannot understand why the applicant's case was treated differently. In addition, he states that when the applicant's mother returns to the United States the applicant will be left alone in Bangladesh. Finally, he requests that the case be reevaluated and a reentry permit be issued in order for the applicant to reenter the United States with her family.

The record of proceeding reveals that on December 24, 1993, the applicant was admitted into the United States as a lawful permanent resident. The record further reflects that the Form I-131 was filed on September 18, 2003. On August 18, 2004, the Acting Director requested that the applicant submit evidence to show that she was physically present in the United States at the time of the Form I-131 filing. The applicant responded on November 2, 2004, and the evidence indicated that the applicant departed the United States on March 30, 1995. The Form I-131 was filed after the applicant departed the United States.

The Forms I-131 filed by the applicant's mother and siblings are not before the AAO on appeal and it is unknown what the circumstances were at the time of their approval. The AAO has no authority to review decisions that are not before it, or to make determinations on the validity of, or reasoning behind, those decisions. The proceeding in the present case relates to the Form I-131 filed by the current applicant and received on September 18, 2003. The AAO will not discuss the applications filed by the applicant's family members.

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 or 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.