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U.S. Citizenship
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Services



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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **MAR 08 2007**

(LIN-05-028-51607 relates)

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:

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 the Philippines, 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 August 14, 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 reveals that on April 30, 2000, the applicant was admitted into the United States as a lawful permanent resident. The record further indicates that the applicant departed the United States on May 29, 2003. On November 3, 2004, while residing in the Philippines, the applicant signed a Form I-131, which was subsequently mailed to the Nebraska Service Center and filed on November 8, 2004. Therefore, the Form I-131 was filed after the applicant departed the United States.

On appeal, the applicant does not dispute the fact that the application, in the present matter, was filed while she was residing in the Philippines. The applicant states that she filed a Form I-131 prior to her departure from the United States and a reentry permit was forwarded to her address on July 15, 2004. In addition, the applicant states that she never received the reentry permit because her brother moved to a new address and, therefore, she filed a new Form I-131 while in the Philippines. Finally, the applicant states that she stayed in the Philippines waiting for her reentry permit, and requests that a favorable consideration will be given to her appeal.

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.