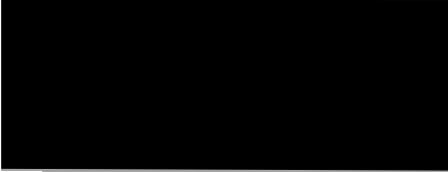


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U.S. Citizenship  
and Immigration  
Services

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I,

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **JAN 12 2009**  
LIN-08-153-52433

IN RE: [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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the 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 Director denied the application after determining that the application was filed after the applicant had departed the United States. *See Director's Decision*, dated April 3, 2008.

Section 223 of the Act provides 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 is a lawful permanent resident of the United States. On July 25, 2006, the applicant filed an Application for Travel Document (Form I-131) with U.S. Citizenship and Immigration Services (USCIS).

On appeal, the applicant states that her husband mailed her Form I-131 while in Ontario, so as to have a record for the mailing date and a tracking number for the package. *Continuation of Form I-290B*, dated April 24, 2008. She also states that her first Form I-131 was mailed from Canada and was approved. The applicant states that she departed the United States on July 21, 2006 and returned on August 14, 2006. She submits a copy of her admission stamp showing that she entered the United States on August 14, 2006. The applicant also states that the instructions on USCIS's website for submitting a Form I-131 are ambiguous, confusing and in conflict with the decision rendered by the district office. The applicant asserts that using the term "apply" in the instructions is ambiguous because it is not clear as to what actions qualify as "applying" and that the 12 days it took for application to reach USCIS was not anticipated. *Id.* The AAO notes that USCIS interprets the time of application as the date of filing. The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). Furthermore, it is the responsibility of the applicant to insure that his or her application reach USCIS during the intended time period.

Thus, 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.