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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

FEB 16 2010

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
(LIN-09-173-50005 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.

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).

Perry Rhew
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 India 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 applicant was not eligible for a travel document.

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. [Emphasis added.]

A review of the record reveals the following facts and procedural history: On June 11, 2009, the applicant filed an Application for Travel Document (Form I-131) with U.S Citizenship and Immigration Services (USCIS). In Part 2, "Application Type," the applicant checked box a., indicating that he was a permanent resident or conditional resident of the United States and was seeking a reentry permit.

The director denied the Form I-131 because the applicant failed to establish that he was a conditional resident or lawful permanent resident and was, therefore, ineligible for a reentry permit. On appeal, the applicant states that he entered the United States illegally prior to January 1, 1982, and has appealed the denial of his application for adjustment of status. The applicant requests that an advance parole document be issued to him, as he is still awaiting the outcome of the appeal of the denial of his Application for Status as a Temporary Resident Under Section 245A of the Act.

The applicant is correct in stating that an applicant who is pursuing an application for temporary resident status under 245A of the Act may submit an application for an advance parole document. In this matter, however, the applicant indicated on his Form I-131 that he was seeking a reentry permit, claiming to be a permanent resident or conditional resident of the United States. He did not indicate on the Form I-131 that he was seeking an advance parole document. Once USCIS concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate classification. *Brazil Quality Stones, Inc., v. Chertoff*, Slip Copy, 2008 WL 2743927 (9th Cir. July 10, 2008).

Accordingly, the director properly denied the Form I-131 because the applicant indicated that he was seeking a reentry permit and he was unable to establish that he is a conditional resident or lawful permanent resident. 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.