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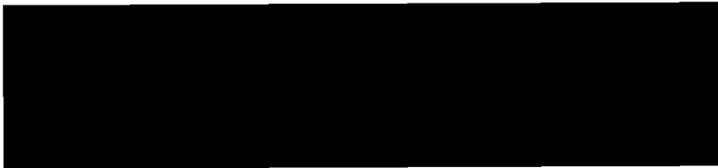
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **FEB 16 2010**
(LIN-09-046-51728 relates)

IN RE: Applicant: [REDACTED]

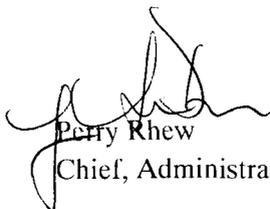
APPLICATION: Application for Travel Document Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. § 1203.

ON BEHALF OF APPLICANT: 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).


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 France 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 it was filed after the applicant had departed from the United States.

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.

A review of the record reveals the following facts and procedural history: The applicant was admitted into the United States as a lawful permanent resident on March 13, 1994. She subsequently filed an Application for Travel Document (Form I-131) with U.S. Citizenship and Immigration Services (USCIS) and was issued a reentry permit on December 21, 2006, valid to December 21, 2008. On January 9, 2009, the applicant filed the instant Form I-131, and provided an address in Paris, France on Part 1 of the form. On February 3, 2009, the director requested that the applicant submit evidence to document that she was in the United States at the time the Form I-131 was filed. In response, the applicant indicated that she had moved to France in 2002. The applicant submitted various supporting documents, including evidence of her entries to the United States from 2005 to 2008, and copies of itineraries and relevant pages from her passport.

The director denied the Form I-131 because the applicant was not present in the United States when she filed her application. On appeal, the applicant does not dispute that she filed the Form I-131 while outside of the United States. The applicant states that she and her family currently live in Paris, France, and plan to move back to the United States “depending on the economic situation.” The applicant also states that she is currently in Boston at the house of her mother-in-law, from where she filed the appeal.

As stated by the director, a lawful permanent resident is not required to obtain a reentry permit if he or she remains outside of the United States for less than one year. Nevertheless, because the applicant did apply for a reentry permit, she must meet the eligibility criteria set forth at 8 C.F.R. § 223.2, which requires the applicant’s physical presence in the United States at the time an application is made to USCIS. Here, the applicant filed the Form I-131 after she departed from the United States.

The Act provides no exception regarding the physical presence requirement at the time of filing a Form I-131 for a reentry permit. Since the application was not filed until after the applicant had departed from 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.