



U.S. Department of Justice

Immigration and Naturalization Service

*DA*

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED]

Office: Nebraska Service Center

Date:

FEB 7 2001

IN RE: Applicant: [REDACTED]

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

IN BEHALF OF PETITIONER: Self-represented

**PUBLIC COPY**

identification data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Weimann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Iran who is seeking to obtain a reentry permit pursuant to section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1203.

The director denied the application after determining that the date by which the applicant must apply for removal of the conditions on his status was September 8, 2000 and that his petition to remove the conditions has not yet been approved.

On appeal, the applicant states that he obtained conditional residence through marriage to a United States Citizen. He further states that he timely filed a Form I-751.

In pertinent part, 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.

With certain exceptions<sup>1</sup>, regulations at 8 C.F.R. 223.2(b) allow for the approval of a reentry permit if the application (Form I-131) is filed by a lawful permanent resident or conditional permanent resident. Additionally, regulations at 8 C.F.R. 223.2(b) require that the application be filed with the Service prior to departure from the United States.

The application for reentry permit was filed on September 26, 2000. The record reflects that the applicant's intended departure from the United States was October 7, 2000, and that the expected length of his trip was "three weeks."

The director, in his decision, cited regulations at 8 C.F.R. 223.3(a)(1) which state, in part:

A reentry permit issued to a conditional permanent resident shall be valid for 2 years from the date of issuance, or to the date the conditional permanent resident must apply for removal of the conditions on his or her status, whichever comes first.

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<sup>1</sup>See 8 C.F.R. 223.2(c) providing ineligibility where (1) a prior reentry permit is still valid, (2) certain extended absences have been taken by the applicant, or (3) the applicant is entitled to nonimmigrant diplomatic or treaty status and has not submitted the applicable waiver and/or tax exemption form.



The director further cited regulations at 8 C.F.R. 216.4(a)(1) which state, in part:

Within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained permanent residence, the alien and the alien's spouse who filed the original immigrant visa petition or fiance/fiancee petition through which the alien obtained permanent residence must file a Petition to Remove the Conditions on Residence (Form I-751) with the Service.

The director noted that the applicant obtained permanent residence on a conditional basis. The applicant filed Form I-751, Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status, on July 17, 2000. That application had not been approved when this application was filed. Therefore, the applicant was ineligible for issuance of a reentry permit when this application was filed.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. The applicant has not met that burden.

**ORDER:** The appeal is dismissed.