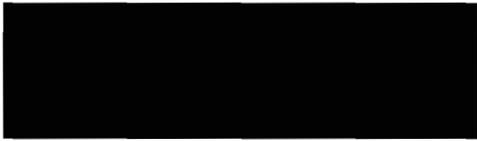




IL2

U.S. Department of Justice
Immigration and Naturalization Service

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



PUBLIC COPY

File: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUN - 4 2002
(LIN 01 012 51022 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

IN BEHALF OF APPLICANT:
[Redacted]

Identifying information
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

Allen E Crawford for
Robert P. Wiemann, 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 sustained. The decision of the director will be withdrawn and the application will be approved.

The applicant seeks to obtain a 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 failed to establish that she properly filed a petition to remove conditions on her conditional permanent resident status.

The regulation at 8 C.F.R. 223.2(b)(1) allows for the approval of a reentry permit if the application (Form I-131) is 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.

In regard to the filing of petitions to remove conditions on conditional resident status, the regulation at 8 C.F.R. 216.4(a)(1) states, in pertinent 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 . . . must file a Petition to Remove the Conditions on Residence (Form I-751). . . . Upon receipt of a properly filed Form I-751, the alien's conditional permanent residence status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition.

The record reflects that the second anniversary of the date the applicant obtained conditional permanent resident status, and the date by which she must have applied for removal of the conditions on that status, was August 17, 2000.

On appeal, counsel submits evidence that the applicant and her spouse jointly filed a Form I-751 on May 22, 2000, as required within the 90-day period immediately preceding August 17, 2000. The record further reflects that the applicant's Form I-751 has not yet been adjudicated.

Counsel has satisfactorily established that the applicant is a conditional permanent resident and that an application for removal of conditions was timely filed. There is no requirement that the application for removal of conditions be adjudicated in order for the applicant to be eligible for issuance of a reentry permit. Therefore, the applicant's appeal will be sustained. The decision of the director will be withdrawn and the application will be approved.



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 met that burden.

ORDER: The appeal is sustained. The decision of the director is withdrawn and the application is approved.