



IA

U.S. Department of Justice

Immigration and Naturalization Service

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

[REDACTED]

FILE: [REDACTED] OFFICE: ROME, ITALY

Date: OCT 31 2002

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Refugee Travel Document Pursuant to 8 C.F.R. 223.1(b)

IN BEHALF OF PETITIONER:

[REDACTED]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 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 that 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 that 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. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Rome, Italy, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reconsider. The motion will be granted and the order dismissing the appeal will be affirmed. The application will be denied.

The applicant, a citizen of Kosovo, seeks to obtain a refugee travel document under 8 C.F.R. 223.1(b). The district director determined that the applicant had departed the United States without first obtaining a travel document or advance parole, that the applicant had been residing outside the United States in his home country for more than twelve months, and that the applicant had failed to establish that he did not intend to abandon his refugee status at the time he departed the United States. The district director denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On appeal, counsel argued that the district director failed to take appropriate notice of the unique context of the U.S.-sponsored

published legal opinion on the readmission of refugees without travel documents, and made a material mistake regarding the receipt date of the application (Form I-131). On motion, counsel asserts that the Associate Commissioner's decision remains (1) completely devoid of the deference to which General Counsel refers, and (2) absolutely incorrect as to the date of initial receipt of the applicant's Form I-131.

8 C.F.R. 223.2(b) states, in pertinent part, that:

Eligibility. (2) Refugee travel document. (i) General. 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 either holds valid refugee status under section 207 of the Act, valid asylee status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylee or refugee status.

The record reflects that the applicant was admitted to the United States as a refugee, pursuant to section 207 of the Immigration and Nationality Act, on June 12, 1999. The record also indicates that the applicant returned to Kosovo under the United States Department of State Return Policy on April 24, 2000. The applicant did not secure a refugee travel document prior to departure.

8 C.F.R. 223.2(b)(2)(ii) provides, in pertinent part, that an application for a refugee travel document can be accepted and adjudicated from an alien who previously had been admitted to the United States as a refugee, and who departed from the United States

without having applied for a refugee travel document, provided:

(A) The alien submits a Form I-131, Application for Travel Document, with the fee required under section 103.7(b)(1) of this chapter;

(B) The district director is satisfied that the alien did not intend to abandon his or her refugee status at the time of departure from the United States;

(C) The alien did not engage in any activities while outside the United States that would be inconsistent with continued refugee or asylee status, and

(D) The alien has been outside of the United States for less than 1 year since his or her last departure.

Counsel states that the applicant returned to Kosovo with his family with the endorsement of the United States government and with the knowledge that if things did not work out, he would be able to return to the United States so long as he (1) applied for refugee travel documents within one year of the date of departure, and (2) did not seek and receive the protection of his country of origin.

With regard to returning Kosovars, Interpreter Releases, No. 28, 1117 (July 26, 1999) reports, in pertinent part:

The State Department said that Kosovars who think they may wish to return to the U.S. within one year of their departure should be advised to apply for a refugee travel document issued by the INS before they leave the U.S. In addition to obtaining the refugee travel document, Kosovar refugees seeking to reenter the U.S. will have to establish their admissibility, as do all aliens applying for admission at a U.S. port of entry. A refugee who remains outside the U.S. for more than one year, however, may be considered to have abandoned status and may not be readmitted as a refugee. Moreover, if a Kosovar refugee travels to Kosovo without first obtaining a refugee travel document, it is possible that he or she may not be able to return to the U.S.

With regard to [REDACTED] legal opinion clarifying the effects of traveling on refugee or asylee status, Interpreter Releases, No. 77, 1385 (September 25, 2000) reports, in pertinent part, that: ". . . The opinion states that refugee travel document requests must be made within one year of the date of departure of the alien from the United States. . . ."

The Service concurs with counsel that the U.S. government, namely The State Department, endorsed and provided means for the applicant

to return to Kosovo. Nevertheless, it was made clear that Kosovar refugees seeking to reenter the U.S. would have to establish their admissibility. It was further made clear that a refugee who remained outside of the U.S. for more than one year, may be considered to have abandoned his or her status, and may not be readmitted as a refugee.

Counsel contends that the Service's finding that the applicant's application for a refugee travel document was received on May 10, 2001 is inaccurate. Counsel asserts that the applicant's Form I-131 application was initially received by the Service on or about March 09, 2001, without the application fee, and returned with a request for evidence that identified a Service receipt date of March 09, 2001. On motion, counsel submits correspondence from an unrelated case in support of this assertion.

The record reflects that the Service received the applicant's Application for Travel Document (Form I-131), with the required fee, on May 10, 2001. The Form I-131 dated May 10, 2001, is the only documentation contained in the record from the applicant that meets the requirements of 8 C.F.R. 223.2(b)(2)(ii)(A). The record contains no other Form I-131, and no other documentation, to establish an earlier receipt date. As the applicant has failed to establish that he filed the Form I-131 application within one year of his departure date from the United States on April 24, 2000, the requirements of 8 C.F.R. 223.2(b)(2)(ii)(D) have not been satisfied. Therefore, the application may not be approved. The prior order dismissing the appeal will be affirmed.

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 Associate Commissioner's order dated July 2, 2002 dismissing the appeal is affirmed. The application is denied.