

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

Identifying data deleted to
prevent clearly unwarranted
invasion of privacy

File: [REDACTED] Office: Nebraska Service Center

Date:

AUG 25 2003

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]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The decision of the director will be withdrawn and the application will be approved.

The applicant is a native of Korea who seeks to obtain a travel document (reentry permit) pursuant to section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1203.

The director denied the application as a matter of discretion. The director noted in his decision that the reentry permit would not be issued until a final decision had been made on the merits regarding the issue of the applicant's abandonment of status.

On appeal, counsel submits a brief asserting that no judicial or administrative authority determined that the applicant had abandoned his residency.

The regulations at 8 C.F.R. § 223.2(b)(1) allow 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. The applicant filed the instant Application for Travel Document, Form I-131, on May 28, 2002.

The record reflects that the applicant was scheduled for a hearing on June 7, 2001 before an immigration judge to determine if he had abandoned his lawful permanent residence status. However, the proceedings were terminated on July 9, 2001. The record further reflects that at the time of application, the applicant was physically present in the United States. He had been readmitted to the United States as a lawful permanent resident on May 21, 2002.

A review of the record and counsel's appeal satisfactorily establishes that the applicant was a lawful permanent resident of the United States at the time of filing his application for a reentry permit, and that the application was filed while the applicant was physically present in the United States. 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.