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**U.S. Citizenship
and Immigration
Services**

IR

[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER
(LIN-02-254-50357 relates)

AUG 03 2004
Date:

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.

Robert P. Wiemann

Robert P. Wiemann, Director
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 sustained and the application approved.

The applicant is a native and citizen of Vietnam, 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 the application was filed after the applicant had departed the United States. *See Director's Decision* dated March 3, 2004.

On appeal, the applicant states that she filed an application for a reentry permit in December 2001. The application was approved and a reentry permit was forwarded to the applicant's address but was returned to the Service Center and destroyed on November 18, 2002, due to "undeliverable address". The applicant states that she submitted a new application through a travel agency in August 2002. The applicant claims that the travel agency used the information provided to them with her first application and that is why the Form I-131 shows her departure date as January 8, 2002. On December 19, 2003, the director issued a "Request for Evidence" in order for the applicant to submit proof of departure from the United States. The applicant failed to provide proof of being inside the United States at the time of filing the Form I-131 and the director denied the application accordingly.

On appeal, the applicant states that she did not depart the United States because she was awaiting the issuance of the reentry permit. She submits the following documentation in order to prove that she was in the United States during January 2002:

- (a) A written estimate for a window repair in her apartment dated January 7, 2002,
- (b) a receipt for the amount paid for the window repair dated January 9, 2002,
- (c) a certificate from a doctor stating that she was seen on November 27, 2001, January 14, 2002, and March 2, 2002 at his office,
- (d) a certificate from another doctor stating that she was seen on January 25, 2002, at his office and,
- (e) an affidavit from her daughter stating that the applicant was present in the United States on January 8, 2002.

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.

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.

After reviewing the evidence in the record the AAO finds that the applicant has established that she had not departed the United States in January 2002 and that she is entitled to the requested reentry permit. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.