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



FILE: [Redacted] Office: NEBRASKA SERVICE CENTER
(LIN-00-215-51726 relates)

MAR 18 2004
Date:

IN RE: Applicant: [Redacted]

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

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, 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 dismissed.

The applicant is a native and citizen of Liberia, who seeks to obtain a refugee travel document pursuant to 8 C.F.R. § 223.1(b). The Director denied the application for a refugee travel document after determining that the application was filed after the applicant departed from the United States. See *Director Decision* dated of December 4, 2000.

On appeal the applicant states:

“The primary basis for denying my application for a new RTD, as set forth in the Decision, is that the “application was filed after the applicant had departed from the United States.” If, as I assume, the above-quoted provision is the basis for the denial, then it is justified only if the phrase “. . . if filed by a person who is in the United States at the time of application . . . ” is interpreted in such a restrictive manner to mean “if filed by a person who must be actually, physically present on the territory of the United States at the time of application,” while also completely disregarding what is clearly intended as the essence of the eligibility requirement, i.e. the holding of “valid asylum status under section 208 of the act”. . . . In any case, the language of statute does not prohibit consideration of a constructive presence in the United States for purposes of granting an application for a RTD, if the application is otherwise eligibility [sic].

I further submit that such constructive presence is a reasonable determination in passing on an application such as mine, even when the applicant is physically outside of the United States at the time the application is filed, if his departure was by sufferance of the INS, that is, if he had traveled while in possession of a valid travel document appropriate to his status issued by the INS.”

The regulation at 8 C.F.R. § 223.1 states in pertinent part:

(b) Refugee travel document. A refugee travel document is issued pursuant to this part and article 28 of the United Nations Convention of July 29, 1951, for the purpose of travel. Except as provided in § 223.3(d)(2)(i), a person who holds refugee status pursuant to section 207 of the Act, or asylum status pursuant to section 208 of the Act, must have a refugee travel document to return to the United States after temporary travel abroad unless he or she is in possession of a valid advance parole document.

The regulation at 8 C.F.R. § 223.2(b)(2) states:

(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 asylum status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylum or refugee status.

The record of proceeding reveals that the Application for Travel Document (Form I-131) was filed on July 17, 2000. Furthermore, the evidence submitted indicates that the applicant departed the United States on May 14, 2000.

The regulation at 8 C.F.R. § 223.2(a)(2)(ii) states:

(2) Refugee travel document.

(ii) Discretionary authority to adjudicate an application from an alien not within the United States. As a matter of discretion, a district director having jurisdiction over a port-of-entry or a preinspection station where an alien is an applicant for admission, or an overseas district director having jurisdiction over the place where an alien is physically present, may accept and adjudicate an application for a refugee travel document from an alien who previously had been admitted to the United States as a refugee, or who previously had been granted asylum status in the United States, and who had departed from the United States without having applied for such refugee travel document, provided:

- (A) The alien submits a Form I-131, Application for Travel Document, with the fee required under §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 the United States for less than 1 year since his or her last departure.

In this case since the application was filed after the applicant had departed from the United States and since it was not filed with an overseas district director having jurisdiction over the place where the applicant is physically present, the application may not be approved

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.