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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



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MAR 26 2004



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
(LIN-03-098-54279 relates)

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 citizen of Gambia, who seeks to obtain a refugee travel document pursuant to 8 C.F.R. § 223.1(b). The Director concluded that the applicant did not hold a valid refugee status under section 207 of the Immigration and Nationality Act (the Act), or valid asylum status under section 208 of the Act, at the time the application was filed and denied the application accordingly. See *Director Decision* dated March 21, 2003.

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.

On appeal the applicant states that he was granted withholding of removal under section 243(h) of the Act, and therefore qualifies to asylum status and is entitled to a refugee travel document.

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

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 proceedings reveals that the applicant entered the United States as a B-2 nonimmigrant visitor for pleasure on March 29, 2000 and has remained in the United States since that date. The applicant applied for asylum on August 8, 2001 and his case was refereed to an Immigration Judge on October 18, 2001. On December 11, 2002 the Immigration Judge denied the applicant's application for asylum and granted his application for withholding of removal. The mere granting of withholding of removal does not confer asylum or refugee status to an applicant. He was granted withholding of removal under section 241(b)(3) of the Act. This section of the Act is not mentioned in the eligibility criteria for a refugee document. As mentioned above the applicant entered the United States as a nonimmigrant and was never granted asylum status under section 208 of the Act or refugee status under section 207, in order to be eligible to receive a refugee travel document.

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.