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U.S. Citizenship
and Immigration
Services

Handwritten initials

[Redacted]

FILE: LIN03 130 54716 Office: Nebraska Service Center

Date:

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been reviewed by 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 Albania who seeks to obtain a refugee travel document under 8 C.F.R. § 223.1(b). On October 8, 2003 the director denied the application after determining that the applicant was not present in the United States at the time she filed the I-131 Application for Travel Document (I-131).

On appeal, counsel states that the director should have used his discretion to issue the travel document under the regulation at 8 C.F.R. § 223.2. She further asserts that the applicant needs to return to the United States to complete her adjustment of status to legal permanent resident; that she is an asylee and is therefore entitled to the protection of the United States; that she misinterpreted the instructions on the refugee travel document and did not understand that she needed to be in the United States at the time of filing; and that the adjustment of status request should be expedited because her father has heart problems and the applicant needs to be with him.

The regulation at 8 C.F.R. 223.2(b)(2) states in pertinent part:

(i) General. Except as otherwise provided in this section, an application may be approved if it is filed by a person who is in the United States at the time of application, and either holds a permanent resident status, 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.

(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 pre-inspection station where an alien is an applicant for admission, or an overseas consular officer or 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 a 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.

The record reflects that the applicant filed a Form I-131 with the Nebraska Service Center on March 17, 2003. On that application she indicated that she would be departing the United States on June 1, 2003. On June 1, 2003 she was requested to provide evidence of her actual date of departure. The response to that request was that the applicant was not in the United States on March 17, 2003. Neither the Nebraska Service Center nor the AAO has the discretion to approve a refugee travel document for an applicant who is not in the United States at the time of the filing. As such, the present application must be denied.

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

ORDER: The appeal is dismissed.