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

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: APR 07 2005

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting 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 Haiti, 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 Acting Director concluded that the applicant did not hold valid lawful permanent resident or conditional resident status at the time the application was filed and denied the application accordingly. *See Acting Director's Decision* dated November 1, 2004.

The applicant completed Part 2, box a, on his Application for Travel Document (Form I-131) that states:

I am a permanent resident or conditional resident of the United States and I am applying for a Reentry Permit.

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.

On appeal the applicant states he entered the United States on July 10, 1985, with his family and his spouse, a U.S. citizen, applied for residency for his children. He further states that he divorced his spouse and his children are in college. In addition the applicant states that he will be sending a brief and/or evidence to the AAO within 30 days of the date the appeal was filed. The appeal was filed on November 4, 2004, and as of this date over four months later no additional documentation has been provided to the AAO.

A search of the electronic database of Citizenship and Immigration Services (CIS) reveals that the applicant entered the United States on February 16, 2004, as a non-immigrant visitor for pleasure. The electronic database further reveals that the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on January 12, 2001, but no decision is reflected in CIS database. Based on the above the applicant is not a lawful permanent or conditional resident of the United States. Absent such evidence, 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.