

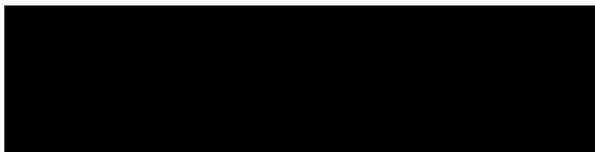
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:  Office: NEBRASKA SERVICE CENTER
(LIN-03-114-54135 relates)

Date:

FEB 16 2005

IN RE: Applicant: 

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 India, 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 denied the application after determining that the application was filed after the applicant had departed the United States. *See Acting Director's Decision* dated August 12, 2004.

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.

The regulation at 8 C.F.R. § 103.2 states in pertinent part:

Applications, petitions, and other documents.

(a) *Filing-(1) General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. The form must be filed with the appropriate filing fee required by § 103.7. . .

. . .

(7) *Receipt date-(i) General.* An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 or part 245a of this chapter, shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date . . .

The record of proceeding reveals that the applicant is a lawful permanent resident of the United States. On October 28, 2002, the applicant signed a Form I-131 and left it with her son. The application was subsequently mailed to the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) and was received by the Nebraska Service Center on February 24, 2003. On May 24, 2004,

the Director requested that the applicant provide evidence to establish her actual date of departure from the United States and copies of the applicant's photo identity information. The applicant responded and the evidence indicates that the applicant departed the United States on October 28, 2002. Since the application was not properly filed until after the applicant had departed the United States the application may not be approved.

On appeal the applicant states that she signed the Form I-131 on October 27, 2002, and left it with her son to forward it to the Service Center. The applicant does not dispute that the application was filed on February 24, 2003, since her son forgot to file the Form I-131. The applicant refers to the regulation at 8 C.F.R. § 223.2(d) that states that departure from the United States before a decision is made on an application for a reentry permit or refugee travel document shall not affect the application. The applicant states that she was physically present in the United States when she signed the application and her subsequent departure should not affect the adjudication of the application

The applicant's statements are not persuasive. The Form I-131 is signed and dated October 28, 2002, and not October 27, 2002 as she states on her appeal. In addition as noted above a Form I-131 may be approved if filed by a person who is in the United States at the time of application. An application shall be regarded as properly filed when it is received, signed and accompany by the required filing fee. The Form I-131 was not properly filed until February 24, 2003. The regulation at 8 C.F.R. § 223.2(d) refers to an applicant's departure from the United States after the Form I-131 is properly filed but prior to a decision being made by the Service. This is not the case in this matter. The application was not properly filed prior to the applicant's departure from the United States and therefore 8 C.F.R. § 223.2(d) is not applicable in this matter.

The applicant further states that if her application had been adjudicated sooner she would have returned to the United States within the applicable time. The applicant departed the United States without a reentry permit and should had contacted the American Embassy in India to inquire about the time permitted to remain outside the United States without jeopardizing her lawful permanent resident status.

It is noted that a lawful permanent resident of the United States who is in possession of evidence of lawful admission (Form I-551) and intends to reenter the United States within one year of his/her last departure may not require a reentry permit to reenter. However, if a lawful permanent resident seeks to reenter after an absence of one year or more, and does not possess a reentry permit, he/she should contact a United States consulate abroad for further information regarding his/her possible options for return to the United States.

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.