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**U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
(LIN-03-083-53335 relates)

Date:

FEB 16 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 the Republic of Korea, 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 September 24, 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. The applicant filed a Form I-131 with the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) on January 16, 2003. On April 21, 2004, the Director requested that the applicant provide evidence to establish her actual date of departure from the United States and new

photographs. The applicant responded and the evidence indicates that the applicant departed the United States on August 16, 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 does not dispute the fact that she departed the United States on August 16, 2002, and filed the Form I-131 on January 16, 2003, while residing in Korea. The applicant states that she did so because the instructions on Form I-131 state that: "Departure from the United States before a decision is made on an application for a reentry permit does not affect the application".

The applicant's statement is not persuasive. Besides the above statement, the instructions on Form I-131 continue and state in pertinent part: "You must be physically present in the United States when you file the application. . ." 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 accompanied by the required filing fee. The Form I-131 was not properly filed until January 16, 2003; five months after the applicant had departed the United States. 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.

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.