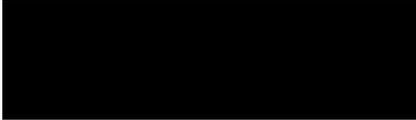


**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



Handwritten initials "L2" with a checkmark-like stroke above them.

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:
(LIN-04-138-52406 relates)

IN RE: Applicant: [REDACTED] **FEB 16 2005**

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 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 Italy 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 Director denied the application after determining that the application was filed after the applicant had departed the United States. See *Director's Decision* dated June 9, 2004.

On appeal the applicant does not dispute the fact that he filed the Form I-131 while residing in Canada. The applicant states that he is presently in the United States filing the appeal and hopes that this will validate his application since the instructions state that an application may be approved if filed by a person who is in the United States at the time of the application and is a lawful permanent resident.

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 record of proceeding reveals that the Form I-131 was properly filed on April 14, 2004. The applicant submitted the Form I-131 while he was residing abroad as indicated by the address on the envelope. Since the application was filed while the applicant was residing in Canada the application may not be approved.

The location of the applicant at the time of his/her appeal is not a controlling factor in the adjudication of the Form I-131. Pursuant to the regulation at 8 C.F.R. § 223.2 the applicant has to be physically present in the United States at the time he or she files the Form I-131 in order to be eligible to receive a reentry permit.

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.

This decision is without prejudice to the filing of a new Form I-131 for a reentry permit, along with the appropriate fee, now that the applicant is physically present in the United States.

ORDER: The appeal is dismissed.