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MAR 02 2005

FILE:  Office: NEBRASKA SERVICE CENTER Date:
(LIN-03-255-50961 relates)

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:


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.

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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 Dominican Republic, 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 or conditional residence status at the time the application was filed and denied the application accordingly. *See Acting Director's Decision* dated September 10, 2004.

The applicant completed Part 2, box a, on her 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, counsel states that Citizenship and Naturalization Services (CIS) erred in its previous denials costing the applicant the ability to adjust her status under the Legal Immigration Family Equity (LIFE) Act and able to travel freely in and out of the United States. Counsel further states that the applicant has been a Temporary Resident since 1988 and had a previously submitted Form I-131 granted.

The proceeding in the present case is for the application for travel document and therefore the AAO will not discuss the applicant's applications under the LIFE Act. A search of the electronic database of Citizenship and Immigration Services (CIS) reveals that the applicant has a pending Application to Adjust Status from Temporary to Permanent Resident (Form I-698) and therefore she is not 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.

The AAO notes that the applicant was paroled into the United States on August 29, 2003, based on an Authorization for Parole of an Alien into the United States (Form I-512) issued by the Boston District Office. The applicant may be eligible for another advance parole. Therefore the decision is without prejudice to the filing of a new Form I-131 for advance parole if the applicant completes the appropriate box on the application.

ORDER: The appeal is dismissed.