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U.S. Citizenship  
and Immigration  
Services

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FILE:  Office: NEBRASKA SERVICE CENTER  
(LIN-04-170-50684 relates)

Date: **MAY 24 2005**

IN RE: Applicant: 

APPLICATION: Application for Refugee Travel Document Pursuant to 8 C.F.R. § 223.1(b).

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 Cuba, who seeks to obtain a refugee travel document pursuant to 8 C.F.R. 223.1(b). The Director concluded that the applicant did not hold valid refugee status under section 207 of the Immigration and Nationality Act (the Act) or valid asylee status under section 208 of the Act at the time the application was filed and denied the application accordingly. See *Acting Director's Decision* dated January 21, 2005.

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

I now hold U.S. refugee or asylee status and I am applying for a Refugee Travel Document.

On appeal the applicant states that he made a mistake and that he should have marked advance parole instead of refugee travel document. In addition he states that he was not sure of his immigration status and after contacting Citizenship and Immigration Services (CIS) he was told to apply for a refugee travel document. The applicant submits a copy of Form I-797 that shows that he has filed an application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. Furthermore the applicant states that his family is planning a cruise vacation in May and he would like to join them.

The regulation at 8 C.F.R. § 223.1 states in pertinent part:

(b) Refugee travel document. A refugee travel document is issued pursuant to this part and article 28 of the United Nations Convention of July 29, 1951, for the purpose of travel. Except as provided in § 223.3(d)(2)(i), a person who holds refugee status pursuant to section 207 of the Act, or asylum status pursuant to section 208 of the Act, must have a refugee travel document to return to the United States after temporary travel abroad unless he or she is in possession of a valid advance parole document.

The regulation at 8 C.F.R. § 223.2(b)(2)(i) states:

General. 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 either holds valid refugee status under section 207 of the Act, valid asylum status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylum or refugee status.

A review of the documentation provided and a search of the electronic database of CIS fail to establish that the applicant holds a valid refugee or asylum status under section 207 or 208 of the Act. Documentation submitted by the applicant reveals that he has a pending application for adjustment of status to that of a lawful permanent resident under section 1 of the CAA and therefore he 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

The AAO notes that if the applicant wishes to travel outside the United States he may be eligible for 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.