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20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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*II*

FILE:  Office: NEBRASKA SERVICE CENTER Date: MAY 24 2005  
(LIN-04-127-54481 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: 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 Germany, 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 resident status at the time the application was filed. In addition in his decision the Acting Director notes that the application seems not to have been signed by the applicant. The Acting Director denied the application accordingly. *See Acting Director's Decision* dated October 28, 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 travel 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 the applicant states that the Acting Director's decision incorrectly identified her as having entered the United States on a nonimmigrant K-1 visa as a fiancée of a U.S. citizen. The applicant states that she never had a K-1 visa but only a F-1 student visa and submits copies of her passport and Form I-94 to support her statement. In addition the applicant states that she is the individual who signed the Form I-131 and submits copies of documentation with her signature in an attempt to show that the signature on the Form I-131 is hers.

Based on the documentation submitted the AAO accepts the fact that the applicant is the individual who signed the Form I-131. A search of the electronic database of Citizenship and Immigration Services (CIS) shows the applicant's present immigration status to be K-1. Based on this information the Acting Director found the applicant to have entered the United States as a K-1 fiancée of a U.S. citizen. Copies of the applicant's F-1 visa and Form I-94 show that she entered the United States as a student in possession of a nonimmigrant F-1 visa. Therefore, the AAO accepts the fact that the applicant entered the United States with a F-1 visa and not a K-1 visa. However, the applicant's admission as an F-1 student does not affect the outcome of the decision.

The database reveals that the applicant has a pending Application to Register Permanent Residence or Adjust Status (Form I-485) and therefore she is not a lawful permanent or conditional resident of the United States. Absent evidence of lawful permanent or conditional residence in the United States, 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 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.