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U.S. Citizenship
and Immigration
Services

I2

[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER
(LIN-04-100-52561 relates)

Date: MAY 24 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:

[Redacted]

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 citizen of Russia, 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 January 26, 2005.

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. On February 18, 2004, the applicant signed a Form I-131. The application was subsequently mailed to Citizenship and Immigration Services (CIS) and was received by the Nebraska Service Center on February 23, 2004. On October 6, 2004, the Acting Director requested that the applicant provide evidence to establish

her actual date of departure from the United States. The applicant responded and the evidence indicates that the applicant departed the United States on March 1, 2003.

On appeal counsel states that the applicant and her spouse both forwarded Forms I-131 for travel documents on the same day. The applicant's spouse's application was granted while hers was denied. Counsel states that she is perplexed by the different outcomes for the two applications, which were filed on the same date.

This office does not have jurisdiction over the Form I-131 filed by the applicant's spouse's and it is unknown at this time if the Form I-131 was approved in error. The record of proceedings reveals that the applicant's spouse was issued a reentry permit on September 28, 2004. The proceeding in the present case relates to the Form I-131 received on February 23, 2004, filed by the applicant and therefore the AAO will not discuss the application filed by the applicant's spouse.

The documentation in the record of proceedings and a statement by the applicant's employer shows that the applicant departed the United States on March 1, 2003, prior to the filing of the Form I-131. Since the application was not filed until after the applicant had departed the United States, the application may not be approved

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.