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



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OCT 20 2005

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
(LIN-04-237-53451 relates)

Date:

IN RE: Applicant: [REDACTED]

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 Haiti, who seeks to obtain a refugee travel document pursuant to 8 C.F.R. § 223.1(b). The Acting Director concluded that the applicant did not hold a valid refugee status under section 207 of the Immigration and Nationality Act (the Act) or valid asylum 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 April 25, 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.

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 Citizenship and Immigration Services (CIS) fail to establish that the applicant holds a valid refugee or asylum status under section 207 or 208 of the Act. The record reveals that the applicant applied for asylum status but his application was administratively closed after it was determined that the jurisdiction for deciding the asylum application rests with the Immigration Court. The record further reveals that no hearing was held before an Immigration Judge.

On appeal, the applicant states that under the Haitian Refugee Immigrant Fairness Act of 1998, Public Law 105-277 (HRIFA) he is not required to appear before an Immigration Judge to be granted asylum status. The applicant submits a copy of the HRIFA law and a copy of a Notice of Action (Form I-797C) showing that he filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on March 23, 2000.

HRIFA allows certain Haitians to apply for lawful permanent resident status. It does not grant Haitians asylum status. The applicant was never granted asylum status under section 208 of the Act, in order to be eligible to receive a refugee travel document. The applicant has failed to establish that he holds a valid

refugee or asylum status under section 207 or 208 of the Act. Absent such evidence, the application may not be approved.

As noted above the applicant has a pending Form I-485 and 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.

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.