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



I2

OCT 20 2005

FILE:



Office: NEBRASKA SERVICE CENTER
(LIN-04-166-51507 relates)

Date:

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 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 India 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 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 February 19, 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.

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 on June 9, 2003, the applicant was admitted into the United States as a lawful permanent resident. On May 17, 2004, the applicant filed a Form I-131 with Citizenship and Immigration Services (CIS) while residing in India. On November 12, 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 and was admitted into India on August 18, 2003.

On appeal the applicant states that she did not know that she had to submit the application before her departure from the United States. The applicant does not dispute the fact that the Form I-131 was submitted after her departure from the United States.

The applicant's statement is not persuasive. The instructions on Form I-131 specifically state that an applicant must be physically present in the United States when he or she files the application. Since the application was not properly 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.