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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **AUG 29 2006**
(LIN-06-036-51108 relates)

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: 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, Chief
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 South Africa, 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 and denied the application accordingly. *See Acting Director's Decision* dated April 28, 2006.

The applicant completed Part 2, box a, on his 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.

Section 223 of the Act provides, in pertinent part, 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.

On appeal, the applicant submits a copy of a Notice of Action (Form I-797A) that shows that he was granted an H1-B1 nonimmigrant visa, valid until February 2, 2007. The AAO notes that while the H1-B1 visa allows him to remain in the United States in a legal non-immigrant status, it is not equivalent to lawful permanent residence status.

The applicant's Form I-131 was properly filed with the Nebraska Service Center on November 16, 2005. A search of the electronic database of Citizenship and Immigration Services (CIS) reveals that the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on October 27, 2005, and, therefore, at the time he filed the Form I-131 he was not a lawful permanent or conditional resident of the United States. The electronic database further reflects that the applicant adjusted his status to that of a conditional resident as a CR-6 (spouse of a U.S. citizen) on June 5, 2006. Pursuant to the regulation at 8 C.F.R. § 223.2 the applicant is not eligible to receive a reentry permit based on his application filed on November 16, 2005.

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.

This decision is without prejudice to the filing of a new Form I-131 for a reentry permit now that the applicant is a conditional resident of the United States.

ORDER: The appeal is dismissed.