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

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MAR 16 2006
Date:

FILE:  Office: NEBRASKA SERVICE CENTER
(LIN-05-091-50248 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 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 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 July 21, 2005.

On appeal, filed by the applicant's son, he requests oral argument in order to address the issues that surround the Application for Travel Document (Form I-131). The regulations at 8 C.F.R. § 103.3(b) provide that the affected party must explain in writing why oral argument is necessary. Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

On appeal, the applicant's son does not dispute the fact that his mother's application for a reentry permit was filed while she was residing in India. The applicant's son states that she did not file a Form I-131 before she left the United States because she was not sure if it would be comfortable for her to remain in India because of her medical condition. The applicant's son further states that it is difficult for him to take care of her in the United States and the applicant wants to spend time in India with her children and grandchildren.

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 July 4, 1999, the applicant was admitted into the United States as a lawful permanent resident. On February 4, 2005, the applicant filed an Application for Travel Document (Form I-131) with Citizenship and Immigration Services (CIS) while residing in India. On April 29, 2005, 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 November 5, 2004, and was admitted into India on November 7, 2004.

The fact remains that the Form I-131 was filed after the applicant departed the United States. No exception regarding the physical presence in the United States at the time of filing a Form I-131 is provided by the Act. Since the application was not properly filed because the applicant had departed the United States, the application may not be approved as a matter of law.

If a lawful permanent resident seeks to reenter the United States 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.