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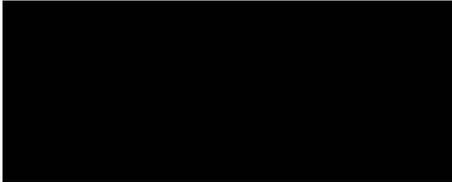
FILE: [Redacted] Office: NEBRASKA SERVICE CENTER  
(LIN-03-040-54497 relates)

Date: MAR 28 2006

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:



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 *Director's Decision* dated May 27, 2004.

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.

The record of proceeding reveals that on August 15, 2000, the applicant was admitted into the United States as a lawful permanent resident. On May 4, 2001, the applicant filed an Application for Travel Document (Form I-131) with the Nebraska Service Center. The application was approved and a reentry permit was forwarded to the applicant's address but it was returned to the Service Center after being "non-deliverable." The reentry permit was destroyed on July 13, 2002. The applicant filed a new Form I-131 on November 22, 2002, while residing in India. The Director denied this application on May 27, 2004.

On appeal, counsel states that the Service erroneously denied the Form I-131 by stating that the applicant did not file the application until November 22, 2002. Counsel states that the applicant filed a Form I-131 on May 4, 2001, which was approved and then destroyed by the Service indicating it was non-deliverable. In addition, counsel states that after being informed that the first reentry permit was destroyed the applicant filed a new application for a reentry permit. Furthermore, counsel asserts that in her first Form I-131, which the applicant submitted before her departure from the United States, she provided her permanent address as that of her brother's and he has not moved from the provided address. Finally, counsel requests that based on the above facts the prior decision be reversed and the applicant be issued a reentry permit.

Counsel's assertion that the applicant's brother has not moved from the address she provided on her first Form I-131 is not persuasive. The record of proceedings contains a letter from the applicant's brother, which states: "Due to an address change they have not received any information about their application for a re-entry permit." The fact remains that the reentry permit was returned and destroyed by the Service Center because it could not be delivered to the applicant at the address provided. The Act does not provide for the issuance of a duplicate reentry permit.

A new reentry permit cannot be issued because the Form I-131, in the instant case, was filed after the applicant departed the United States. No exception regarding 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 until after 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 or she should contact a United States consulate abroad for further information regarding his or 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.