

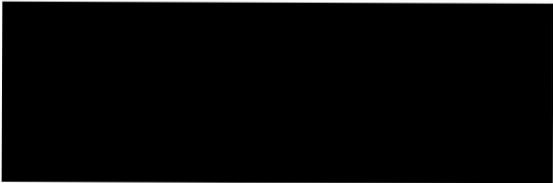
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U.S. Citizenship  
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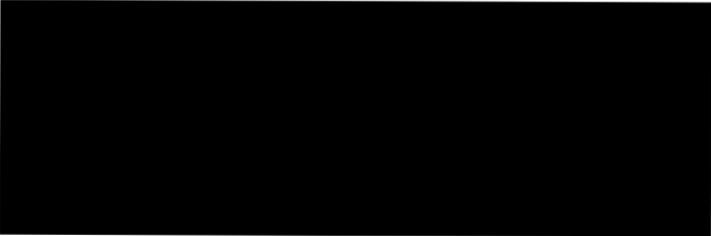
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FILE: Office: NEBRASKA SERVICE CENTER Date: **MAY 19 2006**  
(LIN-05-182-50576 relates)

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:  


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 the United Kingdom, 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 residence status at the time the application was filed and denied the application accordingly. *See Acting Director's Decision* dated November 21, 2005.

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, counsel states that the applicant completed Part 2 box "a" on her Form I-131, Application for Travel Document, based on instructions she received from a CIS official when she filed Form I-485, Application to Register Permanent Residence or Adjust Status, Form I-765, Employment Authorization Document, and Form I-131. In addition, counsel states that the applicant departed the United States and was re-admitted in July 2005 by Customs and Border Protection (CBP) at Miami International Airport after she was instructed to complete a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, to resume processing of her Form I-485. Counsel does not dispute the fact that the applicant marked the wrong box on her Form I-131 but states that she was under the impression that filing a Form I-485 made her a conditional resident of the United States. According to counsel, this impression was confirmed by the CIS office in Las Vegas. Counsel further states that after the applicant was admitted in Miami and filed the Form I-212, she believed that she was not abandoning her Forms I-485 and I-131, and once again departed the United States. Furthermore, counsel states that the applicant needs to return to the United States because her spouse has been hospitalized. Counsel notes that an advance parole for an applicant who is outside the United States may be granted only for humanitarian reasons but further states that this is the only option for the applicant and her spouse to be reunited during his treatment. Finally counsel requests that the Form I-131 be adjudicated on a *nunc pro tunc* basis and the applicant be granted advance parole.

A copy of the applicant's passport indicates that the applicant was admitted on July 5, 2005, at JFK International Airport, New York and not Miami as stated by counsel. In addition, the record of proceedings does not reveal that the applicant filed a Form I-212 and it is unclear from counsel's statement why CBP would instruct the applicant to file a Form I-212. Counsel submits no evidence to that effect. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Notwithstanding the arguments on appeal, the fact remains that the applicant completed Part 2 box “a” on the Form I-131, which states:

I am a permanent resident or conditional resident of the United States and I am applying for a Reentry Permit.

A search of the electronic database of Citizenship and Immigration Services (CIS) reveals that the applicant has a pending Form I-485. The mere filing of a Form I-485 does not confer lawful permanent or conditional residence status to an applicant. The applicant is not a lawful permanent or conditional resident of the United States. Absent such evidence, the application may not be approved even for humanitarian reasons.

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. Since the applicant is presently outside the United States she must file a new Form I-131, along with the appropriate fee and supporting documentation, to the Office of International Affairs, Parole and Humanitarian Assistance Branch.

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.