



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: NEBRASKA SERVICE CENTER

Date: MAR 03 2008

LIN-06-190-51737

IN RE:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 Sweden 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. *Director's Decision* dated March 15, 2007.

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 indicates that the applicant was admitted to the United States as a lawful permanent resident on December 27, 1986. On June 15, 2006, the applicant filed an Application for Travel Document (Form I-131) with Citizenship and Immigration Services (CIS). On September 13, 2006, the Director requested that the applicant provide evidence to establish that she was in the United States at the time of filing the Form I-131. In response to the Director's request, the applicant submitted a statement explaining that she is an employee of the U.S. Embassy in London, United Kingdom and had filed the Form I-131 from the Embassy. She also submitted a letter from a [REDACTED], an Overseas Immigration Specialist with the Department of Homeland Security at the U.S. Embassy in London. [REDACTED] states that he incorrectly advised the applicant that mailing her application from the U.S. Embassy would satisfy the physical presence requirement for obtaining a reentry permit. *Letter from [REDACTED]* dated October 13, 2006.

On appeal, counsel states that the applicant intends to maintain her lawful permanent resident status and that she is currently employed at the U.S. Embassy in London. *Counsel's Brief*, undated. He also submits documentation supporting the explanation given by the applicant as to why she applied for a reentry permit while outside the United States, including e-mail correspondence regarding the advice the applicant was given by [REDACTED].

The AAO notes that the applicant was given incorrect advice. However, the Form I-131 was not filed while the applicant was in the United States and the Act provides no exception regarding the physical presence requirement at the time of filing a Form I-131. As defined by section 101(a)(38) of the Act, the meaning of "United States" for immigration purposes is limited to the continental United States, Alaska, Hawaii, Puerto Rico, Guam and the Virgin Islands of the United States, unless otherwise specified. Since the application was not filed while the applicant was in the United States, the application may not be approved as a matter of law.

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 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 eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.