identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN-02-104-55100 [redacted] Office: NEBRASKA SERVICE CENTER

Date: MAY 26 2004

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, 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 Egypt, 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 applicant's petition to remove the conditions on his status had not been filed within the 90-day period immediately preceding the second anniversary date on which he obtained permanent residence, nor had the application yet been approved. *See Director Decision* dated June 1, 2002.

On appeal, the applicant states that he obtained lawful permanent residence on a conditional basis and that his petition to remove the conditions on his status was filed in time and his status was extended until November of 2002.

The regulation at 8 C.F.R. 223.2(b)(1) allows for the approval of a reentry permit if the application (Form I-131) is 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 regulation at 8 C.F.R. 223.3(a) states in pertinent part:

> *a) Validity. (1) Reentry permit.* Except as provided in Sec. 223.2(c)(2), a reentry permit issued to a permanent resident shall be valid for 2 years from the date of issuance. A reentry permit issued to a conditional permanent resident shall be valid for 2 years from the date of issuance, or to the date the conditional permanent resident must apply for removal of the conditions on his or her status, whichever comes first.

In regard to the filing of applications to remove conditions on conditional resident status, the regulation at 8 C.F.R. 216(a)(a)(1) states in pertinent part:

> a) Filing the petition -- (1) General procedures. Within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained permanent residence, the alien and the alien's spouse . . . must file a Petition to Remove the Conditions on Residence (Form I - 751) . . . . Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition.

The record of proceeding reflects that the second anniversary of the date the applicant obtained conditional permanent resident status, and the date by which he must have applied for removal of the conditions on that status, was September 19, 1999. The record further reflects that the applicant did file a petition to remove the conditions on his status on August 8, 1999 and his alien registration card, employment authorization and travel were extended for one year Furthermore the record reveals that the applicant received Form I-797, Notice of Action, dated November 26, 2001, which states that his alien registration card, employment authorization and travel were extended for one year.

Although the applicant filed the Form I-751 in time, further review of the records of Citizenship and Immigration Services (CIS) reveal that the applicant's conditional permanent resident status has been terminated and he is presently in removal proceedings pursuant to section 237(a)(1)(D)(i) of the Immigration and Nationality Act (Act).

Section 237 of the Act states in pertinent part, that:

(a) Classes of Deportable Aliens.-Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(1) Inadmissible at time of entry or of adjustment of status or violates status.-

(D) Termination of conditional permanent residence.-

(i) In general.-Any alien with permanent resident status on a conditional basis under section 216 (relating to conditional permanent resident status for certain alien spouses and sons and daughters) or under section 216A (relating to conditional permanent resident status for certain alien entrepreneurs, spouses, and children) who has had such status terminated under such respective section is deportable.

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.