U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

SEP 13 2004

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
(LIN-02-276-55084 relates)

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:

[redacted]

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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.

On appeal, counsel states that the applicant was unaware that an Application for Travel Document (Form I-131) had to be filed thirty days prior to his departure from the United States. There is no regulation that states that the Form I-131 must be filed 30 days prior to the applicant's departure from the United States. It seems counsel is referring to the requirement that the photographs submitted with Form I-131 must have been taken at least 30 days prior to the submission of the application and have not been used previously. Counsel does not dispute the fact that the Form I-131 was submitted on September 3, 2002.

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.

The regulation at 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. . .
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> > . . .
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> > *(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 the applicant is a lawful permanent resident of the United States. On June 10, 2002, the applicant signed a Form I-131 and left it with his attorney. The application was subsequently mailed to the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) and received on September 3, 2002. On January 6, 2004, the Director requested that the applicant provide evidence to establish his actual date of departure from the United States and two photos shown in ¾ frontal view of the right side of the face with the right ear visible. The applicant responded and the evidence indicates that the applicant departed the United States on or about June 28, 2002. Two photos were submitted, but they were in full frontal view and therefore unacceptable. Since the application was not properly filed until after the applicant had departed the United States and the required color photos were not submitted the application may not be approved.

On appeal counsel states that if CIS had adjudicated the application sooner the applicant would have returned to the United States within the applicable time. The applicant departed the United States without a reentry permit and should had contacted the American Embassy in India to inquire about the time permitted to remain outside the United States without jeopardizing her lawful permanent resident status.

It is noted that a lawful permanent resident of the United States who is in possession of evidence of lawful admission (Form I-551) and intends to reenter the United States within one year of his/her last departure may not require a reentry permit to reenter. However, 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 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.