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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: ROME, ITALY Date: JUL 20 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Refugee Travel Document Pursuant to 8 C.F.R. § 223.1(b).

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 District Director, Rome, Italy, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The applicant is a native and citizen of Bulgaria, who seeks to obtain a refugee travel document pursuant to 8 C.F.R. 223.1(b). The District Director denied the application for a refugee travel document after determining that the applicant did not qualify for the issuance of a refugee travel document from an overseas office because she remained outside the United States for more than one year before filing the applicant for a refugee travel document. In additional the District Director found that the applicant engaged in activities that are inconsistent with continued refugee status. *See District Director's Decision* dated February 2, 2004.

On appeal, the applicant states that she traveled to Bulgaria in order to establish her right to hereditary property. The applicant states that her dealing with the Bulgarian authorities regarding an apartment took longer than anticipated but she never intemded to abandon her refugee (asylee) status or to engage in activities that are inconsistent with her asylee status. In addition the applicant states that she did not apply for a refugee travel document sooner because the American Embassy in Sofia, Bulgaria advised her that her status was not limited to a one year stay overseas.

The regulation at 8 C.F.R. § 223.2 states in pertinent part:

> (ii) Discretionary authority to adjudicate an application from an alien not within the United States. As a matter of discretion, a district director having jurisdiction over a port-of-entry or a preinspection station where an alien is an applicant for admission, or an overseas district director having jurisdiction over the place where an alien is physically present, may accept and adjudicate an application for a refugee travel document from an alien who previously had been admitted to the United States as a refugee, or who previously had been granted asylum status in the United States, and who had departed from the United States without having applied for such refugee travel document, provided:
>
> > (A) The alien submits a Form I-131, Application for Travel Document, with the fee required under §103.7(b)(1) of this chapter;
> >
> > (B) The district director is satisfied that the alien did not intend to abandon his or her refugee status at the time of departure from the United States;
> >
> > (C) The alien did not engage in any activities while outside the United States that would be inconsistent with continued refugee or asylee status; and
> >
> > (D) The alien has been outside the United States for less than 1 year since his or her last departure

The record reflects that the applicant departed the United States on October 29, 2002, and applied for a refugee travel document on November 5, 2003. The application was clearly filed after the applicant remained outside the United States for more than one year and therefore the overseas office cannot approve the application as a matter of law.

The regulation at 8 C.F.R. 103.3(a)(2)(i) indicates that appeals must be made within 30 days after service of the decision (33 days if the notice was delivered by mail). The record indicates that the decision was issued on February 2, 2004. The appeal was filed on March 26, 2004, 53 days after the decision was mailed to the applicant. Thus, the appeal was not timely filed.

The regulations at 8 C.F.R. 103.3(a)(2)(v)(B)(2) state that, if an untimely appeal meets the requirement of a motion to reopen as described in 8 C.F.R. 103.5(a)(2), the appeal must be treated as a motion, as a decision must be made on the merits of the case.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Review of the record indicates that the appeal does not meet this requirement.

As the appeal was untimely filed and the applicant has failed to provide any new facts or evidence that support a motion to reopen, the appeal must be rejected.

ORDER: The appeal is rejected as untimely filed.