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U.S. Citizenship and Immigration Services

[redacted]

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APR 25 2005

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
(LIN-04-170-51395 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: 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 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 Germany, 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 October 18, 2004.

The applicant completed Part 2, box a, on her Application for Travel Document (Form I-131) that states:

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

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.

On appeal the applicant states that due to her misunderstanding regarding her status she marked Part 2, box a, on the Form I-131. In addition she states that she did not know that she was not supposed to leave the United States without a travel documents.

A search of the electronic database of Citizenship and Immigration Services (CIS) reveals that the applicant has a pending Application to Register Permanent Residence or Adjust Status (Form I-485) and therefore she is not a lawful permanent or conditional resident of the United States. Absent such evidence, the application may not be approved.

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

The AAO notes that the applicant appears to be outside the United States since May 25, 2004. She should contact the American Embassy in Germany to inquire about the possibility of transferring her Petition for Alien Relative (Form I-130) overseas for processing of an immigrant visa.

ORDER: The appeal is dismissed.