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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
(LIN-05-137-52712 relates)

Date: MAY 11 2006

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, Chief
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 Japan, 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 denied the application after determining that the application was filed after the applicant had departed the United States. See *Acting Director's Decision* dated December 8, 2005.

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.

On appeal, the applicant states that he entered the United States on December 19, 2004 and on February 24, 2005, he traveled to Japan in order to prepare for enrolment in the university. In addition, the applicant attached a certificate from the university showing that he is enrolled and attends the university in Japan.

The record of proceeding reveals that the applicant is a lawful permanent resident of the United States. On February 24, 2005, he signed a Form I-131. The application was mailed to Citizenship and Immigration Services (CIS) and was received by the Nebraska Service Center on April 4, 2005. On August 17, 2005, the Acting Director requested that the applicant provide evidence to establish his actual date of departure from the United States. The applicant responded and the evidence indicates that the applicant departed the United States on February 24, 2005. The Act provides no exception regarding the physical presence in the United States at the time of filing a Form I-131. Since the application was not filed until after the applicant had departed the United States, the application may not be approved as a matter of law.

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.