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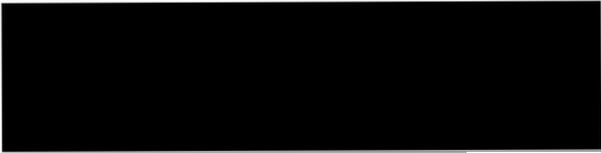
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U.S. Citizenship
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Services

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FILE: Office: NEBRASKA SERVICE CENTER Date: JAN 06 2009
(LIN-05-800-58811 RELATES)

IN RE:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in cursive script, appearing to read "John F. Grissom".

John F. Grissom, Acting 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 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 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 20, 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.

The record of proceeding reflects that the applicant was admitted into the United States as a lawful permanent resident on September 19, 1999. On July 19, 2005, the applicant filed an Application for Travel Document (Form I-131) with U.S. Citizenship and Immigration Services (USCIS). On September 19, 2005, the Acting Director requested that the applicant provide evidence to establish her actual date of departure from the United States. The applicant responded and the evidence demonstrates that the applicant departed the United States on or about June 17, 2004, as she had indicated on the Form I-131. Therefore, the record establishes that the Form I-131 was filed after the applicant departed the United States.

On appeal, the applicant states that she initially applied for a re-entry permit prior to departing the United States but that the approved Form I-131 re-entry permit was never received by her. She submits a copy of a June 29, 2005 letter from the Nebraska Service Center that acknowledges her inquiry regarding this document. The letter indicates that the re-entry permit was mailed to the applicant on December 14, 2004 and was not returned as undeliverable. The letter advises the applicant that she may be required to reapply. The applicant states that she filed the instant Form I-131 as a result of this instruction and asks that her original Form I-131 be considered favorably. *Applicant's letter*, received January 17, 2006.

In that the Form I-131 now before the AAO on appeal was filed after the applicant departed the United States, the application may not be approved as a matter of law. The Act provides no exception regarding the physical presence requirement at the time of filing a Form I-131. Accordingly, the appeal will be dismissed.¹

¹ The AAO also notes that a Form I-131 filed while a previously-issued re-entry permit is still valid may not be approved unless the earlier document has been returned to USCIS or it is demonstrated that it has been lost. *See* 8 C.F.R. § 223.2(c)(1). As the record in the present case does not reliably demonstrate that the re-

Although the applicant states that she is seeking the issuance of a re-entry permit based on the Form I-131 approved by USCIS on December 10, 2004, the AAO notes that the applicant has been outside the United States for more than two years, the longest period of time for which a re-entry permit is valid. *See* 8 C.F.R. § 223.3(a)(1). Therefore, the issuance of a new re-entry permit based on the applicant's previously-filed Form I-131 would not cover the period of time that the applicant has now been outside the United States and allow her return. The AAO notes that the applicant, on January 7, 2008, filed a Form I-407, Abandonment of Lawful Permanent Resident Status, with USCIS.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

entry permit issued to the applicant had been lost at the time she filed the instant Form I-131, the AAO finds that the acting director was precluded from approving the application on this basis as well.