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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 17 2009

(LIN-09-005-51128 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.

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

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 Kenya 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 applicant had not established that he was present in the United States at the time the application was filed.

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. [Emphasis added.]

A review of the record reveals the following facts and procedural history: The applicant was admitted into the United States as a lawful permanent resident on February 18, 2007. On September 23, 2008, the applicant filed an Application for Travel Document (Form I-131) with U.S Citizenship and Immigration Services (USCIS). The applicant indicated in Part 3 of the Form I-131 that his intended date of departure was September 1, 2008. Regarding the purpose of his trip at Part 4 of the Form I-131, the applicant stated: "To visit relatives and friends." The applicant indicated that Canada was the country to which he intended to travel. On December 26, 2008, the director issued a Request for Evidence (RFE), requesting that the applicant submit evidence to document that the applicant was in the United States at the time he filed the Form I-131, and provided the applicant with a list of items to submit as evidence. In response, counsel did not submit any of the requested items. Rather, counsel contended that September 1, 2008 was the date of the applicant's intended departure, not the date he departed the United States, and contended further that the applicant had never traveled outside the United States.

The director denied the Form I-131 because the applicant had not established that he was present in the United States at the time the application was filed. On appeal, counsel disputes that the applicant filed the Form I-131 while outside of the United States. As evidence that the applicant was in the United States at the time he filed the Form I-131, counsel submits an "Enrollment Verification," signed on March 26, 2009 by an authorized official of Ohlone College in Fremont, California, reflecting, in part, that the applicant was enrolled for the Fall Semester, which started on September 2, 2008 and ended on December 19, 2008, during which he completed 18 credits.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be

considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the previously requested evidence that is now submitted for the first time on appeal. Further, the AAO notes that the applicant's attempted submission still does not comply with the director's direction that the petitioner submit the evidence as described in the RFE. It is noted that the "Enrollment Verification" for the applicant does not establish that the applicant was present in the United States at the time the application was filed. The "Enrollment Verification," therefore, would have no merit had it been timely submitted.

Because the applicant applied for a reentry permit, he must meet the eligibility criteria set forth at 8 C.F.R § 223.2, which requires the applicant's physical presence in the United States at the time an application is made to USCIS. Here, the applicant has not established that he was present in the United States at the time the Form I-131 was filed. The Act provides no exception regarding the physical presence requirement at the time of filing a Form I-131 for a reentry permit. Since the applicant has not established that he was present in the United States at the time the application was filed, the application may not be approved as a matter of law.

If a lawful permanent resident seeks to reenter after an absence of one year or more, and does not possess a reentry permit, he or she should contact a United States consulate abroad for further information regarding 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 eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.