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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2050
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



I

Date:

JUL 24 2012

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for a Reentry Permit Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. § 1203

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".
for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Nebraska Service Center (“the director”) denied the application for a reentry permit (Form I-131), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the United Kingdom 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 it was filed after the applicant had departed from the United States. *See Director's Decision* dated April 14, 2011.

Section 223 of the Act, 8 U.S.C. § 1203, 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 August 14, 1987. On December 1, 2010, the applicant filed an Application for Travel Document (Form I-131) with United States Citizenship and Immigration Services (USCIS). The applicant indicated her date of intended departure from the United States at Part 3.1 as October 1, 2010. On February 3, 2011, the director requested that the applicant provide evidence to establish that she was in the United States at the time of filing her application. The director specifically requested that the applicant submit a copy of her transportation/airline tickets, a copy of all the pages of her passport, and/or copies of other pertinent documents to establish that she was in the United States at the time of her application.

In response, the applicant submitted a copy of an electronic ticket from [REDACTED] showing that the applicant departed from London, England, on January 15, 2011 and entered the United States through Orlando, Florida, on the same date and that she departed the United States on February 3, 2011 and entered London, England, on the same date. The applicant also submitted a letter dated August 26, 2010, from University of Surrey, Guildford, Surrey, United Kingdom. The letter informs the applicant that she has been accepted for a program at the university, and that the program starts on October 1, 2010. Based on the evidence of record, the director determined that the applicant had failed to establish that she was present in the United States at the time she filed the Form I-131 application and denied the application accordingly.

On appeal, the applicant submits copies of all the pages of her current and expired passport. The applicant states that she was not in possession of the passport at the time she responded to the director's request for evidence. A review of the applicant's expired passport shows that the

applicant entered the United States on April 13, 2010 and on January 15, 2011. The applicant does not submit evidence of when she departed the United States after her April 13, 2010 entry, which necessitated her January 15, 2011 entry into the United States. The record does not contain evidence showing when the applicant departed the United States after her April 13, 2010 entry. Therefore, the applicant has failed to establish that she was present in the United States at the time she filed her Form I-131 application on December 1, 2010.

To be eligible for a reentry permit, an applicant must be physically present in the United States at the time the Form I-131 is filed with USCIS. 8 C.F.R. § 223.2(b). The Act provides no exception regarding the physical presence requirement 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.¹

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 is dismissed.

ORDER: The appeal is dismissed.

¹ If a lawful permanent resident seeks to reenter the United States 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 reentering the United States.