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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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12

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
(LIN-03-005-51864 relates)

Date:

FEB 16 2005

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
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 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 Director denied the application after determining that the application was filed after the applicant had departed the United States. See *Director's Decision* dated June 1, 2004.

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.

The regulation at 8 C.F.R. § 103.2 states in pertinent part:

Applications, petitions, and other documents.

(a) *Filing-(1) General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. The form must be filed with the appropriate filing fee required by § 103.7. . .

...

(7) *Receipt date-(i) General.* An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 or part 245a of this chapter, shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date . . .

The record of proceeding reveals that the applicant is a lawful permanent resident of the United States. On September 2, 2002, the applicant signed a Form I-131. The application was subsequently mailed to the Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) and was received by the Nebraska Service Center on October 7, 2002. On February 13, 2004, the Director requested that the

applicant provide evidence to establish her actual date of departure from the United States and new photos. The applicant responded and according to the Director the evidence indicates that the applicant departed the United States on February 5, 2002. The Director denied the application since it was not properly filed until after the applicant had departed the United States.

On appeal, the applicant's daughter states that the applicant did not depart the United States in February 2002 but departed on September 4, 2002. The applicant's daughter submits copies of the applicant's passport and a copy of the applicant's airline ticket. The applicant's ticket reflects that the applicant departed the United States on September 4, 2002. After a thorough review of the record of proceedings the AAO concludes that the stamp in the applicant's passport is dated September 5, 2002. Based on the above this office finds that the applicant departed the United States on September 4, 2002 and not in February 2002 as stated by the Director.

Although the applicant departed the United States on September 4, 2002, her Form I-131 was not properly filed until October 7, 2002. Since the application was not properly filed until after the applicant had departed the United States the application may not be approved.

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.