

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

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OCT 20 2005

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

(LIN-03-056-51461 relates)

Date:

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

Robert P. Wiemann, Director
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 Bangladesh 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 February 18, 2005.

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 . . .

On appeal the applicant's mother does not dispute the fact that the Form I-131 was filed while the applicant was residing in Bangladesh. The applicant's mother states that the applicant was a minor when he left the United States but did not return within a year due to his brother's illness. In addition the applicant's mother states that the applicant depends on his parents, both of whom are residing and working in the United States.

Finally the applicant's mother states that the separation of the applicant from his family has caused emotional and psychological distress to the family and requests that the application for reentry permit be accepted.

The record of proceeding reveals that on April 15, 2000, the applicant was admitted into the United States as a lawful permanent resident. The applicant filed a Form I-131 with Citizenship and Immigration Services (CIS) on December 10, 2002, while residing in Bangladesh. On March 26, 2004, the Director requested that the applicant provide new photographs and 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 June 15, 2000. 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.