U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

I 2

[redacted]

FILE: LIN-07-055-50720 Office: NEBRASKA SERVICE CENTER Date: APR 2 9 2008

IN RE: [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, 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 sustained.

The applicant is a native and citizen of Laos, 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 as a matter of discretion after determining that the applicant was convicted of a crime of moral turpitude and had been placed in removal proceedings. Although the director noted that the applicant had been granted a "Do Not Remove" order on November 21, 2006 by an immigration judge, he determined that the applicant might still be inadmissible to the United States based on his conviction. *Director's Decision* dated May 29, 2007.

On appeal, the applicant states that he is no longer in removal proceedings and submits a copy of the court order from the Immigration Court in Denver, Colorado. *Applicant's Letter*, dated June 4, 2007.

The regulation at 8 C.F.R. § 223.1 states in pertinent part:

> (a) Reentry permit.
>
> > A reentry permit allows a permanent resident to apply for admission to the United States upon return from abroad during the period of the permit's validity without the necessity of obtaining a returning resident visa.

The regulation at 8 C.F.R. § 223.2 states in pertinent part:

> (e) Processing.
>
> > Approval of an application is solely at the discretion of the Service. . .

The AAO finds that the director incorrectly denied the applicant's Form I-131 on the basis of a potential ground of inadmissibility. The Adjudicator's Field Manual, Chapter 52.3(b)(6), Reentry Permits states:

> 6) Possible Inadmissibility . The fact that an applicant may be inadmissible upon return to the U.S. is not a ground for denying a reentry permit. In such a case, however, if the alien is still in the U.S., you should notify the alien of the possible inadmissibility and explain the ramifications of traveling outside the U.S. Several possibilities arise, including:
>
> > • If the alien is eligible for a waiver under section 212(c) of the Act (as someone who falls within the decision in INS v. St. Cyr. 121 S. Ct. 2271 (2001) (see Chapter 41.2 of this field manual), he or she may apply for such waiver in conjunction with the reentry permit application. If you approve the waiver, annotate the "Restrictions" area of the permit.
>
> > • If the alien is eligible for a waiver under section 212(g), 212(h), or 212(i) of the Act, he or she may apply for such waiver in conjunction with the reentry permit application. If you approve the waiver, annotate the "Restrictions" area of the permit.

- If the alien will be traveling outside the U.S. for less than 181 days and he or she does not, or will not, fall within the provisions of paragraph (i), (iii), (iv), (v) or (vi) of section 101(a)(13)(C) of the Act, you may explain to the alien that if he or she is gone from the U.S. in excess of 180 days he or she will be considered to be an applicant for admission upon return to the U.S. and may well be found to be inadmissible. You may then approve the reentry permit for a period which does not exceed 180 days.

- If the alien is not eligible for a waiver of inadmissibility under section 212(c), 212(g), 212(h), or 212(i) of the Act, will be making an application for admission upon his or her return, and still desires to travel, take a sworn statement which establishes the applicant's identity, alienage, inadmissibility, and understanding of the risks he or she would be taking be departing from the U.S. You may then approve the reentry permit application, annotating the Restrictions area of the permit "Possible Inadmissibility, Section 212(a)(X) of the Act" (where "X" is the ground(s) of inadmissibility).

Therefore, a Form I-131 cannot be denied based on a potential ground of inadmissibility. Furthermore, the record indicates that the applicant is not inadmissible. The attorney notes from the Immigration and Customs Enforcement attorney state that the applicant concedes that he has a conviction for a crime of moral turpitude. *Attorney's Notes*, dated July 21, 2006. The attorney's notes also state that the applicant's request for cancellation of removal would be granted upon payment of the required filing fee, with no appeal. *Attorney's Notes*, dated November 2, 2006. On November 21, 2006, the attorney notes that the applicant's fee waiver was granted and the final decision was entered. The court order from the Immigration Court in Denver, Colorado states that the applicant was granted cancellation of removal by the Immigration Judge and was admitted to the United States as a returning resident alien. *Court Order*, dated November 21, 2006. Therefore, the record indicates that the question regarding the applicant's inadmissibility has been resolved because although his conviction for receiving stolen goods under Title 18.2-108 of the Code of Virginia was raised in his removal hearing, he was admitted to the United States as a returning resident by the Immigration Judge.

As noted above, the approval of an application is solely at the discretion of the Service. Based on the information contained in the current record of proceeding, a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.