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U.S. Citizenship
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Services

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FILE: Office: NEBRASKA SERVICE CENTER Date: **AUG 05 2008**
LIN-04-023-51129

IN RE:

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 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 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 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 22, 2005.

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 their 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 May 14, 2000. On November 3, 2003, the applicant filed an Application for Travel Document (Form I-131) with Citizenship and Immigration Services (CIS). On September 1, 2004, the Acting Director requested that the applicant provide evidence to establish her actual date of departure from the United States. The applicant responded and the evidence indicates that she departed the United States on September 28, 2003. Therefore, the Form I-131 was filed after the applicant departed the United States.

On appeal, the applicant does not dispute that she filed the Form I-131 after she departed the United States. The applicant states that she intends to return to the United States and maintain her permanent residence status. Thus, she states she is requesting the re-entry permit. *Form I-290B*, dated March 18, 2005.

The fact remains that the Form I-131 was filed after the applicant departed the United States. 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.

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 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.