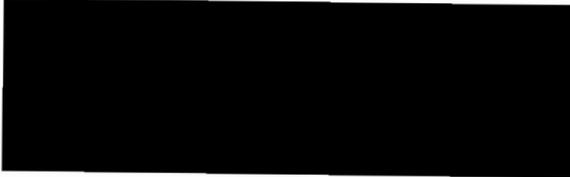


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U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

MAY 29 2008

(LIN-07-041-52748)

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.

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

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 dismissed.

The applicant is a native and citizen of the Philippines 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. *Director's Decision* dated July 14, 2007.

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 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 October 20, 2004. On November 27, 2006, the applicant filed an Application for Travel Document (Form I-131) with Citizenship and Immigration Services (CIS). On March 5, 2007, the Director requested additional evidence to establish that the applicant was in the United States at the time of filing. The applicant responded with a memorandum indicating that she was living in the Philippines and that her reentry permit had expired. *Memorandum*, dated April 26, 2007. Accompanying the memorandum were the applicant's unused airline ticket for the United States; copies of pages from her Philippine passport showing her last entry into the Philippines as January 20, 2005; and a certification from her school showing that she had attended school in the Philippines from June 2006 to March 2007.

On appeal, the applicant's father submits a letter stating that his children have been sent to live with their mother and attend school in the Philippines while they wait for her visa to become available. *Father's Letter*, July 26, 2007. He does not dispute that his daughter was outside the United States at the time the application was filed. *Form I-290B*. Therefore, the AAO finds 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.