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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
(LIN-08-108-50199 relates)

Date: **APR 03 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting 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 of South Africa and citizen of Sri Lanka 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 from the United States.

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. [Emphasis added.]

A review of the record reveals the following facts and procedural history: The applicant was admitted into the United States as a lawful permanent resident on March 6, 2007. On February 26, 2008, the applicant filed an Application for Travel Document (Form I-131) with U.S Citizenship and Immigration Services (USCIS). Regarding the purpose of his trip at Part 4 of the Form I-131, the applicant stated: "I am still in high school and would like very much to complete high school before returning to the United States." The applicant indicated that Sri Lanka was the country to which he intended to travel. On September 8, 2008, the director requested that the applicant submit two passport-style photographs, which the applicant did within that same month. On October 8, 2008, the director requested that the applicant submit evidence to document that he was in the United States at the time he filed the Form I-131. In response, the applicant indicated that he left the United States on March 20, 2007. In addition, the applicant attached a letter from his school in Sri Lanka, a copy of his airline ticket, and copies of the relevant pages from his passport.

The director denied the Form I-131 because the applicant was not present in the United States when he filed his application. On appeal, the applicant does not dispute that he filed the Form I-131 while outside of the United States. The applicant states that he is entitled to return to the United States within 12 months from the date of his departure.

The applicant is correct in stating that he is not required to obtain a reentry permit if he remains outside of the United States for less than one year. Nevertheless, because the applicant did apply for a reentry permit, he must meet the eligibility criteria set forth at 8 C.F.R § 223.2, which requires the applicant's physical presence in the United States at the time an application is made to USCIS. Here, the applicant filed the Form I-131 after he departed from the United States. The Act provides no exception regarding the physical presence requirement at the time of filing a Form I-131 for a reentry permit. Since the application was not filed until after the applicant had departed from the United States, the application may not be approved as a matter of law.



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If a lawful permanent resident seeks to reenter after an absence of one year or more, and does not possess a reentry permit, he or 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.