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

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[redacted]

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 05 2009

(LIN-08-190-50457 relates)

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 and citizen of Iran 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.

The record of proceeding reflects that the applicant was admitted into the United States as a lawful permanent resident on August 29, 2000. On June 19, 2008, the applicant filed an Application for Travel Document (Form I-131) with U.S Citizenship and Immigration Services (USCIS). Attached to the Form I-131 was a statement from the applicant indicating that she was not currently in the United States because of poor health. The applicant requested a reentry permit so that she could "keep [her] green card valid" and join her children and grandchildren in the United States. Accordingly, the evidence shows that the Form I-131 was filed after the applicant departed from the United States.

On appeal, the applicant's daughter submits a letter stating that her mother's health improved and the applicant was able to enter the United States on November 14, 2008 using a reentry permit that the applicant had received in November 2006. The applicant's daughter attaches a copy of the applicant's reentry permit, issued in November 2006, which contains an entry stamp into the United States on November 14, 2008.

The fact remains that the Form I-131 was filed after the applicant departed from the United States. The Act provides no exception regarding the physical presence requirement at the time of filing a Form I-131 to obtain 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.

The AAO also finds another ground for denying the Form I-131. The record shows that the applicant received a reentry permit in 2006 that was valid from November 27, 2006 until November 27, 2008. The applicant filed the instant Form I-131 in June 2008, while her current reentry permit was still valid. An application for a reentry permit shall be denied if the applicant was previously issued a reentry permit which is still valid, unless it was returned to the Service or it is demonstrated

that it was lost. 8 C.F.R. § 223.2(c)(1). As the applicant filed the instant Form I-131 while her previously-issued reentry permit was still valid, she would not have been entitled to a new reentry permit even if the applicant had filed her application while she was in the United States.

The AAO notes its plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 and the application will be denied.

ORDER: The appeal is dismissed.