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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 08 2005

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.

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

Robert P. Wiemann, Director
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 Brazil, 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 concluded that the applicant did not hold valid lawful permanent or conditional resident status at the time the application was filed and denied the application accordingly. *See Acting Director's Decision* dated March 1, 2005.

The applicant completed Part 2, box a, on her Application for Travel Document (Form I-131) that states:

I am a permanent resident or conditional resident of the United States and I am applying for a Reentry Permit.

In pertinent part, section 223 of the Act provides that an alien lawfully admitted for permanent residence who intends to travel 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.

On appeal the applicant states that she is happily married to a U.S. citizen for over two years and it is inconceivable that Citizenship and Immigration Services (CIS) would not recognize the legality of her marriage. In addition she states that she deserves to live with her husband, visit Brazil and return to the United States.

In his decision the Acting Director denied the Form I-131 because the applicant is not a lawful permanent or conditional resident of the United States and not because of the legality of her marriage.

The record of proceeding reveals that the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant on October 23, 2003. In addition the record of proceeding contains a copy of an Employment Authorization Card (EAD) issued on behalf of the applicant on April 7, 2004. The EAC reflects a category code of C09, as an alien who has filed an Application to Register Permanent Residence or Adjust Status (Form I-485). A search of the electronic database of CIS does not reveal that the applicant was granted lawful permanent or conditional resident status. Absent such evidence, the application may not be approved.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.


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The AAO notes that the applicant may be eligible for advance parole. Therefore the decision is without prejudice to the filing of a new Form I-131 for advance parole if the applicant completes the appropriate box on the application.

ORDER: The appeal is dismissed.