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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 06 2005
(LIN-03-067-52543 relates)

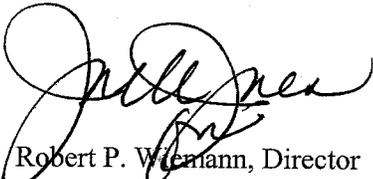
IN RE: Applicant: [REDACTED]

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.


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 failed to establish that she filed a Petition to Remove the Conditions on Residence (Form I-751) prior to the expiration of her conditional status and denied the application accordingly.

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 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.

As noted above the Acting Director denied the Form I-131 because the applicant failed to establish that she filed a Form I-751 prior to the expiration of her conditional status and referred to the regulation at 8 C.F.R. § 216.4(a)(6) which states in pertinent part:

Termination of status for failure to file petition. Failure to properly file Form I-751 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien's permanent residence status and the initiation of proceedings to remove the alien from the United States...

A search of the electronic database of Citizenship and Immigration Services (CIS) reveals that the applicant was admitted into the United States on June 27, 2001, as a conditional resident based of her marriage to a U.S. citizen. Pursuant to 8 C.F.R. § 216.4(a)(1) the applicant was eligible to file a Form I-751 from March 30, 2003, until June 27, 2003, the date her conditional resident status expired.

The regulation at 8 C.F.R. § 216.4 states in pertinent part:

Joint petition to remove conditional basis of lawful permanent resident status for alien spouse.

(a) Filing the petition -- (1) General procedures. Within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained permanent residence, the alien and the alien's spouse who filed the

original immigrant visa petition or fiance/fiancee petition through which the alien obtained permanent residence must file a Petition to Remove the Conditions on Residence (Form I-751) with the Service...

Based on the above the AAO finds that the Acting Director erred in stating that the applicant was not eligible to receive a reentry permit because she had not filed a Form I-751 prior to the expiration of her conditional status. The applicant's conditional status expired on June 27, 2003, and the Form I-131 was filed on February 10, 2003.

On appeal, filed on September 3, 2004, the applicant states that she did not file a Form I-751 prior to the expiration of her conditional status for good cause. In addition she states that she was unable to return to the United States as she is financially dependent on her spouse. It is unclear from the record of proceedings where the applicant resided when she filed the Form I-131.

Although the applicant may have been eligible for a reentry permit on February 10, 2003, the date she filed the Form I-131, she did not file a Form I-751 and she did not hold a valid lawful permanent resident or conditional resident status on August 9, 2004, the date the Acting Director denied the Form I-131. Therefore the applicant is not eligible to receive a reentry permit.

An appeal must be decided according to the law as it exists on the date the appeal is before the appellate body. *See Bradley v. Richmond School Board*, 416 U.S. 969, 710-1 (1974). The applicant has not shown that she was a lawful permanent resident or conditional resident of the United States at the time of the adjudication for her Form I-131. Absent such evidence, the application may not be approved.

It is noted that an individual who is not in possession of evidence of lawful admission (Form I-551) and intends to reenter the United States should contact a United States consulate abroad for further information regarding his/her 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 that the applicant is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.