

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy.
PUBLIC COPY



U.S. Citizenship
and Immigration
Services

LI



FILE:  Office: NEBRASKA SERVICE CENTER
(LIN-05-021-50802 relates)

Date: **MAY 11 2006**

IN RE: Applicant: 

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, Chief
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 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 Acting Director denied the application after determining that the application was filed after the applicant had departed the United States. *See Acting Director's Decision* dated August 16, 2005.

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.

On appeal, the applicant states that she completed and signed a Form I-131 prior to her departure from the United States. She left the form with her sister-in-law to forward it to the Service Center. The applicant's sister-in-law misplaced the application and forwarded it to the Service Center in October 2004. The applicant does not dispute the fact that the application was filed in October 2004, since her sister-in-law misplaced the Form I-131. The applicant further states that in anticipation of the approval of the Form I-131 she continued teaching in the Philippines. Finally, the applicant requests that she be permitted to enter the United States so that she would not lose her permanent resident status.

The record of proceeding reveals that the applicant is a lawful permanent resident of the United States. On April 28, 2004, she signed a Form I-131 and left it with her sister-in-law. The application was subsequently mailed to Citizenship and Immigration Services (CIS) and was received by the Nebraska Service Center on October 28, 2004. On February 10, 2005, the Acting Director requested that the applicant provide evidence to establish her actual date of departure from the United States. The applicant responded and the evidence indicates that the applicant departed the United States on May 14, 2004. Regardless of unexpected circumstances, the application was filed after the applicant departed the United States. The Act provides no exception regarding the physical presence in the United States 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 the United States and does not possess a reentry permit, he/she 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.