



U.S. Citizenship  
and Immigration  
Services

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



11

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER  
(LIN-05-124-53111 relates)

Date: **MAY 11 2006**

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, 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 Guatemala, 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 December 8, 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 filled out and signed a Form I-131 prior to her departure from the United States. In addition, the applicant states that she left the form with her father to forward it to the Service Center. The applicant further states that she did not know that her father did not mail it until March. Finally, the applicant states that she has a U.S. citizen child and if she loses her permanent resident status it would have an emotional impact on him and her.

The record of proceeding reveals that the applicant was granted lawful permanent resident status on October 10, 1992. The record further reveals that the applicant departed the United States on September 23, 2004. Although the applicant states that she filled out the Form I-131 prior to her departure it is dated March 15, 2005. The Form I-131 was received by the Nebraska Service Center on March 18, 2005. On August 18, 2005, the Acting Director requested that the applicant provide evidence to establish her actual date of departure from the United States. The applicant responded with evidence indicating that she departed the United States on September 23, 2004. Therefore, 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.