

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

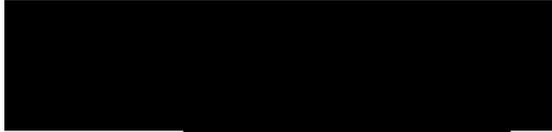
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

I,



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: DEC 17 2008
LIN 07 173 52047

IN RE: Applicant: [REDACTED]

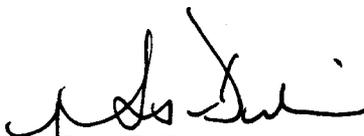
PETITION: Application for Travel Document Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. § 1203.

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.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 director denied the application after determining that the application was filed after the applicant had departed the United States.

The regulation at 8 C.F.R. § 103.2(b)(7)(i), which discusses receipt dates, states that an application or petition shall be regarded as properly filed when it is signed and executed and the required filing fee is attached. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions will not retain a filing date.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. See 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a U.S. Citizenship and Immigration Services (USCIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on June 2, 2008. On June 30, 2008, the applicant filed an appeal of that decision; however, the director rejected the appeal. The applicant resubmitted the appeal on July 11, 2008, or 74 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. An untimely-filed appeal must meet specific requirements to be treated as a motion. The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Furthermore, 8 C.F.R. § 103.5(a)(3) requires that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy.

Review of the record indicates that the appeal does not meet the requirements of a motion. The applicant states that, prior to her departure from the United States in March 2007, she submitted a Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile; however, that form was sent back to her and she was told to submit a Form I-131, Application for a Travel Document. The applicant submitted the Form I-131 on June 1, 2007.

The applicant's submission of an incorrect form before her departure from the United States does not excuse her failure to comply with the applicable law governing travel documents. Section 223 of the Immigration and Nationality Act, 8 U.S.C. § 1203, 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 Act provides no exception regarding the physical presence requirement 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.

As the appeal was untimely filed and the applicant has failed to provide any new facts or evidence that support a motion to reopen or reconsider, the appeal must be rejected.

ORDER: The appeal is rejected as untimely filed. The application is denied.