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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: FEB 19 2010

~(LIN-09-068-50662 relates)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the 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 of South Korea and citizen of Canada 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 it was filed after the applicant had departed from the United States.

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.

A review of the record reveals the following facts and procedural history: The applicant was admitted into the United States as a lawful permanent resident on July 23, 2004. He subsequently filed an Application for Travel Document (Form I-131) with U.S. Citizenship and Immigration Services (USCIS) and was issued a reentry permit on January 10, 2007, valid to January 10, 2009. On January 26, 2009, the applicant filed the instant Form I-131 with USCIS, and listed a U.S. address at Part 1 of the Form I-131. The applicant did not specify an intended date of departure at Part 3 of the Form I-131, but did indicate that he planned to return to the United States by the end of 2009. Regarding the information about his proposed travel at Part 4 of the Form I-131, the applicant indicated that he intended to visit Canada, and that the purpose of his trip was that he was currently employed at the Bank of Montreal in Langley, B.C., Canada. At Part 5 of the Form I-131, the applicant indicated that he had spent one to two years total time outside the United States since becoming a U.S. permanent resident. On March 27, 2009, the director requested that the applicant provide evidence to establish his actual date of departure from the United States. The applicant responded on April 15, 2009, and indicated as follows: he was not presently in the United States; he had departed the United States on July 10, 2005; and he intended to return to the United States as soon as he received the travel document. As evidence that he was in the United States at the time of filing the instant Form I-131, the applicant submitted a credit card statement dated December 20, 2008, listing a December 14th charge of \$108.39 from [REDACTED] in Bellingham, Washington. The applicant annotated the credit card statement as follows: "This is only thing I can prove I was in USA when I applied." The director denied the Form I-131, concluding that the Form I-131 was filed after the applicant departed the United States.

On appeal, the applicant states that he was previously issued a travel document that was valid from January 10, 2007 until January 10, 2009. As supporting documentation, the applicant submits copies of the pages from his travel document, which reflect the following five entries to the United States on: October 5, 2007; December 26, 2007; April 27, 2008; May 2, 2008; and July 19, 2008.

As the applicant does not specify his last entry date to the United States, it is not clear that the petition was filed while he was present in the United States. It is also noted that the Bank of Montreal credit card statement is insufficient evidence of the applicant's presence in the United States. Moreover, the applicant's travel document that was issued on January 10, 2007 does not contain an entry stamp in support of the applicant's assertions that he was present in the United States on the date that is reflected on his credit card statement and at the time the instant application was filed with USCIS.

As stated by the director, a lawful permanent resident is not required to obtain a reentry permit if he or she remains outside of the United States for less than one year. Nevertheless, because the applicant did apply for a reentry permit, he must meet the eligibility criteria set forth at 8 C.F.R. § 223.2, which requires the applicant's physical presence in the United States at the time an application is made to USCIS. Here, the applicant has not established that he filed the Form I-131 while he was present in the United States.

The Act provides no exception regarding the physical presence requirement at the time of filing a Form I-131 for a reentry permit. Since the applicant has not established that he filed the Form I-131 while he was present in the United States, the application may not be approved as a matter of law.

If a lawful permanent resident seeks to reenter after an absence of one year or more, and does not possess a reentry permit, he or she should contact a United States consulate abroad for further information regarding 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 eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.