

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

I,



FILE:



Office: NEBRASKA SERVICE CENTER

Date: **MAR 19 2010**

(LIN-08-153-52379 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 and citizen of Burma 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 September 18, 2005. She 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 June 7, 2006, valid to June 7, 2008. On May 19, 2008, the applicant's husband filed the instant Form I-131 on the applicant's behalf with USCIS. On April 3, 2009, the director requested that the applicant submit evidence to document that she was in the United States at the time the Form I-131 was filed. In her April 14, 2009 response, the applicant indicated that her husband had filed for the family's travel documents while he was in the United States, and that she was not present in the United States at the time of filing. The applicant submitted various supporting documents, including evidence of her entries to the United States in 2007 and 2009, and copies of an airline ticket and itinerary.

The director denied the Form I-131 because the applicant was not present in the United States when the application was filed. On appeal, the applicant does not dispute that she was outside of the United States when her husband filed the Form I-131 on her behalf. The applicant states that she "was in Myanmar looking after the children."

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, she 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's husband filed the Form I-131 on the applicant's behalf while the applicant was outside of 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 application was not filed until after the applicant had departed from 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.