

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: [Redacted] Office: NEBRASKA SERVICE CENTER
(LIN-09-210-51470 relates)

Date: **MAR 19 2010**

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.

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 India 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 applicant was not eligible for a travel document.

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.

The evidence of record indicates that the applicant entered into the United States as a B-2 visitor for pleasure on November 24, 1997. The record also indicates that the applicant has a pending Form I-485, Application to Register Permanent Residence or Adjust Status. The applicant submitted the instant I-131 application on August 17, 2009. In Part 2, "Application Type," the applicant checked box a., indicating that he held U.S. conditional resident status and was applying for a reentry permit.

The director denied the Form I-131 because the applicant failed to establish that he was a conditional resident or lawful permanent resident and was thus ineligible for a reentry permit. On appeal, the applicant states, in part, that he is a victim of crime, and lists his rights and accomplishments.

As discussed above, the record indicates that the applicant has a pending I-485, Application to Register Permanent Residence or Adjust Status. While an applicant who has a pending application for lawful permanent residence status may submit an application for an advance parole document, the applicant in this matter indicated on his Form I-131 that he held U.S. conditional resident status and was applying for a reentry permit. He did not indicate on the Form I-131 that he was seeking an advance parole document. Once U.S. Citizenship and Immigration Services (USCIS) concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate classification. *Brazil Quality Stones, Inc., v. Chertoff*, Slip Copy, 2008 WL 2743927 (9th Cir. July 10, 2008).



LIN-09-210-51470

Page 3

Accordingly, the director properly denied the Form I-131 because the applicant indicated that he was seeking a reentry permit and he was unable to establish that he is a conditional resident or lawful permanent resident. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.