



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

11

Date: **DEC 08 2012**

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for a Reentry Permit Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. § 1203

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen

Thank you,

Ron M. Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Nebraska Service Center (“the director”) denied the application for a reentry permit (Form I-131), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native 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 the application was filed after the applicant had departed from the United States. *See Director’s Decision*, dated December 15, 2011.

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 record of proceeding reflects that the applicant was admitted into the United States as a lawful permanent resident on August 24, 2010. On May 2, 2011, the applicant filed an Application for Travel Document (Form I-131) with United States Citizenship and Immigration Services (USCIS). The applicant indicated his date of departure from the United States at Part 3.1 as July 31, 2011; however, the application was postmarked and mailed from Ottawa, Canada on April 23, 2011. Thus, the record shows that the Form I-131 was filed after the applicant departed the United States. On December 15, 2011, the director denied the Form I-131 because the applicant was not present in the United States when he filed his application.

On appeal, the applicant does not dispute that he filed the Form I-131 while outside of the United States. The applicant states that his children study in Canada and that he has to remain in Canada to support his children’s education. The applicant also states that he has worked with [REDACTED] for twenty-six years and that he would like to transfer within the company in the United States in order to retain company benefits and service credit.

To be eligible for a reentry period, an applicant must be physically present in the United States at the time the Form I-131 is filed with USCIS. 8 C.F.R § 223.2(b). The fact remains that the Form I-131 was filed after the applicant departed 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.

If a lawful permanent resident seeks to reenter after an absence of one year or more, and does not possess a reentry permit, he/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 is dismissed.

**ORDER:** The appeal is dismissed.