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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date:

MAY 12 2014

Office: NEBRASKA SERVICE CENTER

FILE:

IN RE:

Applicant:

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.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron M. Rosenberg
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 of Hong Kong and citizen of Great Britain 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 September 3, 2013.

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 January 5, 2006. On July 29, 2013, the applicant filed the current Application for Travel Document (Form I-131) with United States Citizenship and Immigration Services (USCIS). The applicant indicated her intended date of departure from the United States at Part 3.1 as May 27, 2013; however, on July 29, 2013, the USCIS received the application, post marked Hong Kong. Thus, the record shows that the Form I-131 was filed after the applicant departed the United States. On September 3, 2013, the director denied the Form I-131 because the applicant was not present in the United States when she filed the application.

On appeal, the applicant does not dispute that she filed the Form I-131 while outside of the United States. The applicant asserts however, that the current application was for the replacement of a prior approved re-entry permit that was lost in the mail, that she had to travel to Hong Kong for work and that she could no longer wait to receive a replacement card in the United States before traveling to Hong Kong.¹

¹ The record shows the applicant had submitted a Form I-131 on May 29, 2012, under receipt number [REDACTED]. The application was approved and mailed to the applicant at her last known address of record on February 28, 2013, which the applicant claims on appeal, was “lost.” There is no evidence in the record showing that the approval notice was returned to the USCIS as undeliverable. The applicant has not provided any evidence that would establish that the approval notice was indeed “lost en route to [her] address in Elmhurst, New York.”

To be eligible for a reentry permit, 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). Here, it is undisputed that the applicant filed the Form I-131 while she was physically present in Hong Kong. Since the application was filed 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.