



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF H-X-

DATE: JAN. 20, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-131, APPLICATION FOR TRAVEL DOCUMENT

The Applicant, a native and citizen of China, seeks a travel document. *See* Immigration and Nationality Act (INA, or the Act) § 223, 8 U.S.C. § 1203. The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the Form I-131, Application for Travel Document, on March 13, 2015, finding that the Applicant did not file the application while in the United States, as required by regulation.

On appeal, the Applicant states that he initially filed the Form I-131 while in the United States, but the application was returned to sender and he had to refile the application. He submits a photocopy of an envelope addressed to "USCIS" with a "return to sender" sticker on it.

Section 223 of the Act, 8 U.S.C. § 1203, provides, in pertinent part, that

(a) (1) Any alien lawfully admitted for permanent residence...who intends to depart temporarily from the United States may make application to the Attorney General [now the Secretary of the Department of Homeland Security (Secretary)] for a permit to reenter the United States, stating the length of his intended absence or absences, and the reasons therefor. Such applications shall be made under oath, and shall be in such form, contain such information, and be accompanied by such photographs of the applicant as may be by regulations prescribed.

(b) If the [Secretary] finds

(1) that the applicant under subsection (a)(1) of this section has been lawfully admitted to the United States for permanent residence, or that the applicant under subsection (a)(2) of this section has since admission maintained the status required of him at the time of his admission and such applicant desires to visit abroad and to return to the United States to resume the status existing at the time of his departure for such visit,

(2) that the application is made in good faith, and

(3) that the alien's proposed departure from the United States would not be contrary to the interests of the United States, the [Secretary] may, in his discretion, issue the permit, which shall be valid for not more than two years from the date of issuance and shall not be renewable.

The regulation at 8 C.F.R. § 223.2 states, in pertinent part, that

(a) *Application.* An applicant must submit an application for a reentry permit, refugee travel document, or advance parole on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

(b) *Filing eligibility.* (1) Reentry permit. An applicant for a reentry permit must file such application while in the United States and in status as a lawful permanent resident or conditional permanent resident.

8 C.F.R. §103.2(a) provides, in pertinent part, that

(7) *Receipt date.* (i) *Benefit requests submitted.* A benefit request which is not signed and submitted with the correct fee(s) will be rejected. A benefit request that is not executed may be rejected. Except as provided in 8 CFR parts 204, 245, or 245a, a benefit request will be considered received by USCIS as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format. The receipt date shall be recorded upon receipt by USCIS.

....

(iii) *Rejected benefit requests.* A benefit request which is rejected will not retain a filing date. There is no appeal from such rejection.

The statute states that a lawful permanent resident who intends to visit abroad and return to the United States to resume that status may apply for a permit to reenter the United States. Section 223 of the Act states that a reentry permit may be granted to a lawful permanent resident of the United States for a proposed departure, but not for a departure that has already occurred. Moreover, as noted above, the regulations state clearly that an applicant requesting a reentry permit “must file such application while in the United States and in status as a lawful permanent resident or conditional permanent resident.” 8 C.F.R. § 223.2(b). In addition, the regulations state that a benefit request will be considered received by USCIS as of the actual date of receipt at the location designated for filing, and applications that are not properly filed do not retain a filing date. 8 C.F.R. §103.2.

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The Applicant became a lawful permanent resident on October 6, 2009. The record indicates that the Applicant filed his Form I-131 on October 30, 2014. The record also indicates, and the Applicant does not contest, that he departed the United States on October 11, 2014.

On appeal, the Applicant states that he originally submitted the Form I-131 prior to departing the United States, but the application was returned to him. In support of that statement, the Applicant submitted a partial copy of an envelope that is labeled “return to sender” and dated October 18, 2014. The envelope does not indicate its contents, the date that it was mailed, or the date it was received by USCIS. Moreover, as stated in the regulations, an application that is not properly filed does not retain a filing date. The Applicant does not state that the application that he attempted to file prior to departing the United States was improperly rejected by USCIS. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

To be eligible for a reentry permit, an applicant must be physically present in the United States when he or she files Form I-131 with USCIS. 8 C.F.R § 223.2(b). Here, the Applicant was not present in the United States when Form I-131 was filed. Therefore the application was properly denied.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of H-X-*, ID# 15204 (AAO Jan. 20, 2016)