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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
(LIN-04-246-53092 relates)

Date: NOV 15 2005

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Refugee Travel Document Pursuant to 8 C.F.R. § 223.1(b).

ON BEHALF OF APPLICANT:

[REDACTED]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting 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 Bolivia, who seeks to obtain a refugee travel document pursuant to 8 C.F.R. § 223.1(b). The Acting Director concluded that the applicant did not hold a valid refugee status under section 207 of the Immigration and Nationality Act (the Act) or valid asylum status under section 208 of the Act at the time the application was filed and denied the application accordingly. *See Acting Director's Decision* dated February 8, 2005.

The applicant completed Part 2, box b, on his Application for Travel Document (Form I-131) that states:

I now hold U.S. refugee or asylee status and I am applying for a Refugee Travel Document.

The regulation at 8 C.F.R. § 223.1 states in pertinent part:

(b) Refugee travel document. A refugee travel document is issued pursuant to this part and article 28 of the United Nations Convention of July 29, 1951, for the purpose of travel. Except as provided in § 223.3(d)(2)(i), a person who holds refugee status pursuant to section 207 of the Act, or asylum status pursuant to section 208 of the Act, must have a refugee travel document to return to the United States after temporary travel abroad unless he or she is in possession of a valid advance parole document.

The regulation at 8 C.F.R. § 223.2(b)(2)(i) states:

General. 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 either holds valid refugee status under section 207 of the Act, valid asylum status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylum or refugee status.

A review of the applicant's Service file fail to establish that the applicant held a valid refugee or asylum status under section 207 or 208 of the Act at the time he filed the Form I-131. The record reveals that the applicant applied for asylum status on November 16, 1995. On March 28, 1996, an Asylum Officer interviewed the applicant for asylum status. His application was referred to an Immigration Judge and an Order to Show Cause for a removal hearing was issued on April 5, 1996. The record reflects that on January 31, 2000, an Immigration Judge denied the applicant's application for asylum, for withholding of deportation and for suspension of deportation and granted the applicant voluntary departure until July 31, 2000, in lieu of deportation. The applicant filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed on November 20, 2002, and he was granted 30 days, from the date of the decision, to depart voluntary. The applicant filed a Petition for Review of an Order of the BIA and a Motion for Stay of Removal, with the United States Court of Appeals for the Eighth Circuit. On December 31, 2002, the Eighth Circuit Court of Appeals granted the applicant's motion for stay of removal, and on April 22, 2004, the Court remanded the case to the BIA for further proceedings. On March 2, 2005, the BIA vacated its decision of November 20, 2002, and granted the applicant asylum status.

On appeal, counsel submits a brief and a copy of an Arrival-Departure Record (Form I-94) issued in the applicant's name. In his brief counsel asserts that the Director erroneously denied the application for a refugee travel document. In support of his assertion, counsel submits a copy a Form I-94, which indicates that the applicant was granted asylum status based on the Circuit Court Judge's decision of April 22, 2004.

Counsel's assertion is not persuasive. In its April 22, 2004 decision the United States Court of Appeals for the Eighth Circuit clearly did not grant asylum status to the applicant. The decision remanded the case to the BIA for further proceedings. On March 2, 2005, the BIA vacated its decision dated November 20, 2002, and granted the applicant asylum status. Based on the above facts, it is clear that the Form I-94 was issued in error. Citizenship and Immigration Services (CIS) is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *Matter of Khan*, 14 I&N Dec. 397 (BIA 1973), by extension; *Matter of M-*, 4 I&N Dec. 532 (BIA 1951; BIA, A.G. 1952).

The record of proceeding reveals that the Form I-131 was filed on September 3, 2004. As mentioned above, the applicant was granted asylum status on March 2, 2005. Since the applicant did not possess valid asylum status under section 208 of the Act at the time of filing the application he is not eligible to receive a refugee travel document.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

This decision, however, is without prejudice to the filing of a new Form I-131 now that the applicant has been granted asylum status.

ORDER: The appeal is dismissed.