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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **OCT 18 2005**
(LIN-05-048-52229 relates)

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.

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 the People's Republic of China, 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 Acting Director concluded that the applicant did not hold valid lawful permanent resident or conditional resident status at the time the application was filed and denied the application accordingly. *See Acting Director's Decision* dated March 9, 2005.

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

I am a permanent resident or conditional resident of the United States and I am applying for a Reentry Permit.

In pertinent part, section 223 of the Act provides that an alien lawfully admitted for permanent residence who intends to travel 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.

A search of the electronic database of Citizenship and Immigration Services (CIS) reveals that the applicant has a pending Application to Register Permanent Residence or Adjust Status (Form I-485) and therefore he is not a lawful permanent or conditional resident of the United States. Absent such evidence, the application may not be approved.

On appeal the applicant submits a copy of a Notice of Action (Form I-797C) showing that he filed a Form I-485 on November 13, 2004. The applicant states that he made a mistake and that he should have marked the box for advance parole in order to be able to return to the United States after traveling overseas.

The AAO notes that the applicant may be eligible for advance parole. Therefore the decision is without prejudice to the filing of a new Form I-131 for advance parole if the applicant completes the appropriate box on the application.

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.

ORDER: The appeal is dismissed.