

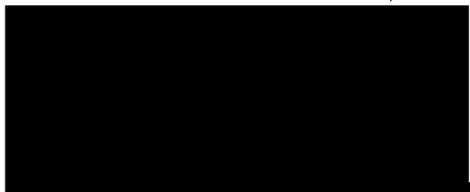
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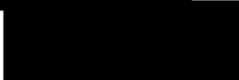
U.S. Citizenship  
and Immigration  
Services

I<sub>2</sub>

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: AUG 04 2006

(LIN-05-126-54296 relates)

IN RE:

Applicant:



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, Chief  
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 South Africa 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 denied the application after determining that the application was filed after the applicant had departed the United States. See *Acting Director's Decision* dated March 6, 2006.

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.

On appeal, the applicant does not dispute the fact that he applied for a reentry permit while residing in South Africa. The applicant states that he was issued a reentry permit which had an expiration date of February 19, 2004. In addition, the applicant states that after he entered the United States on November 4, 2003, he checked the immigration website and read that he could not apply for a travel document if he already had a valid one. The applicant departed the United States on December 30, 2003, in order to continue his studies in South Africa. The applicant further states that he followed the required process, the way he understood it, and he requests that he be issued a reentry permit in order to return to the United States to join his family and seek employment after he completes his education.

The record of proceeding reveals that on March 5, 2001, the applicant was admitted into the United States as a lawful permanent resident. The record further indicates that the applicant departed the United States on December 30, 2003. On December 29, 2004, while residing in South Africa, the applicant signed an Application for Travel Document (Form I-131), which was subsequently mailed to the Nebraska Service Center and received on March 21, 2005. On August 24, 2005, the Acting Director requested that the applicant provide evidence to establish his actual date of departure from the United States. The applicant responded and the evidence indicates that the applicant departed the United States on or about December 30, 2003.

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

(c) Ineligibility.

- (1) Prior document still valid. An application for a reentry permit or refugee travel document shall be denied if the applicant was previously issued a reentry permit or refugee travel document which is still valid, unless it was returned to the Service or it is demonstrated that it was lost.

The electronic database of Citizenship and Immigration Services (CIS) reflect that the applicant was issued a reentry permit valid from February 19, 2002, until February 19, 2004. The regulations at 8 C.F.R. § 223.2(c)(1), the instructions on Form I-131 and the CIS website clearly indicate that a reentry permit may not be issued if the applicant was previously issued one that is still valid and has not been returned to the Service Center. While in the United States, the applicant could have filed a Form I-131 and returned his valid reentry permit in order for a new one to be issued. Instead, he departed the United States and did not file a Form I-131 until March 21, 2005.

The fact remains that the Form I-131 was filed after the applicant departed the United States. No exception regarding the physical presence in the United States at the time of filing a Form I-131 is provided by the Act. 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.

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.