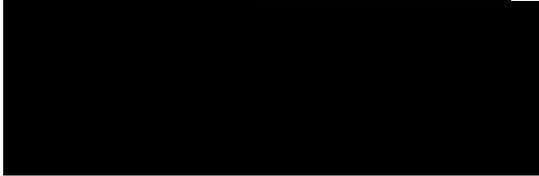




U.S. Citizenship
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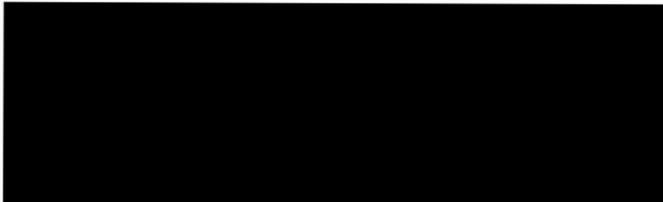
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 05 2006
(LIN-05-038-50834 relates)

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:



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 sustained and the application approved.

The applicant is a native and citizen of Korea, 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 as a matter of discretion after determining that the applicant has adverse information recorded against him. *See Acting Director's Decision* dated July 29, 2005.

On appeal, counsel states that CIS did not provide the applicant with the adverse information and an opportunity to rebut the information, before the decision on the Application for Travel Document (Form I-131) was rendered, in violation of 8 C.F.R. § 103.2(b)(16). In addition, counsel states that the fact that the applicant is currently in removal proceedings is not a valid basis for denial of a reentry permit. According to counsel the applicant remains a LPR until a final removal order is issued and, therefore, he retains the right to return to the United States to contest the currently pending removal proceedings. Counsel refers to 8 C.F.R. § 1001.1(p) which states in pertinent part:

The term lawfully admitted for permanent residence means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Such status terminates upon entry of a final administrative order of exclusion, deportation, or removal.

Counsel asserts that since no final removal order has been issued the applicant is entitled to return to the United States to contest the charges against him during his removal hearing.

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.

In addition, the regulation at 8 C.F.R. § 223.2 (f) states in pertinent part:

Issuance of a reentry permit or refugee travel document to a person in exclusion or deportation proceedings shall not affect those proceedings.

The AAO concurs with counsel. The applicant was issued a Form I-551 and until it is rescinded or a final removal order is issued, his status as a LPR has not been terminated. In addition, since a final removal order

had not been issued when the applicant departed the United States, he did not self-deport. The applicant is entitled to attend his removal hearing. He filed a Form I-131 prior to his departure from the United States and as his Form I-551 has not been rescinded, he is entitled to a reentry permit. Furthermore, after contacting the San Francisco District Counsel's office, the AAO was informed that the District Counsel does not have an objection to sustaining the appeal and issuing a reentry permit. The AAO also notes that the applicant has another hearing scheduled for December 13, 2006.

After reviewing the evidence in the record of proceedings, the AAO finds that the applicant has established that he is entitled to the requested reentry permit. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained and the application approved.