



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

I 2



FILE:



Office: NEBRASKA SERVICE CENTER

Date: JUN 05 2006

(LIN-05-151-52615 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 Kenya 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 January 5, 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, filed by the applicant's mother, she states that the applicant is a permanent resident of the United States who traveled back to his country of origin in order to continue his education. The applicant's parents state that they were given the impression by the immigration office in Philadelphia that since the applicant was a minor he would be permitted to study outside the United States as long as his parents reentry permits were valid. They do not dispute the fact that they filed the Form I-131 in April 2005 while the applicant was in Kenya, but they state that they provided the Service with all the requested evidence needed for the approval of the Form I-131. The applicant's parents request that a reentry permit be issued on behalf of the applicant in order for him to travel to the United States and keep the family united.

The record of proceeding reveals that on June 16, 2004, the applicant was admitted into the United States as a lawful permanent resident. The record indicates that the applicant departed the United States on June 20, 2004. On April 20, 2005, while residing in Kenya, the applicant filed a Form I-131 with Citizenship and Immigration Services (CIS). Despite the applicant's parents' belief, the fact remains that the application was filed after the applicant departed the United States. The Act provides no exception regarding the physical presence in the United States at the time of filing a Form I-131. 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.

If a lawful permanent resident seeks to reenter the United States and does not possess a reentry permit, he/she should contact a United States consulate abroad for further information regarding his/her possible options for return to the United States. The applicant may be eligible for a SB-1, returning resident visa or his parents may have to file a Petition for Alien Relative (Form I-130) on behalf of the applicant.

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.