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FILE:



Office: NEBRASKA SERVICE CENTER
(LIN-05-261-51732 relates)

Date: JUN 14 2006

IN RE:

Applicant:



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

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 dismissed.

The applicant is a native of the former USSR and citizen of Moldova, who seeks to obtain a refugee travel document pursuant to 8 C.F.R. § 223.1(b). 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 6, 2006.

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.

On appeal, counsel submits a brief and an affidavit from the applicant's daughter. In his brief, counsel states that the applicant departed the United States on November 25, 2004, to visit a friend in Moldova. The applicant's Refugee Travel Document (RTD) expired while she was hospitalized in Moldova. Counsel does not dispute the fact that he filed an Application for Travel Document (Form I-131) on the applicant's behalf on September 12, 2005, while the applicant was in Moldova. In addition, counsel states that the applicant was not able to return to the United States due to extenuating circumstances, and refers to a legal opinion of former Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) General Counsel which explains the procedure of obtaining a refugee travel document. Additionally, counsel states that the applicant filed a Form I-131 within one year of her date of departure from the United States with the Nebraska Service Center.

In a letter dated November 18, 2005, the applicant, through counsel, requested that the Nebraska Service Center either assume jurisdiction of the Form I-131 based on the General Counsel's memorandum or forward it to the CIS office in Moscow which has jurisdiction over individuals residing in Moldova. According to counsel, the Nebraska Service Center's refusal to forward the Form I-131 to the correct CIS office was an abuse of discretion, an error of law, and an abdication of responsibility. In her affidavit, the applicant's daughter states that after the applicant traveled to Moldova she became ill, was hospitalized and was unable to return to the United States prior to the expiration of her RTD. In addition, she states that she contacted the American Consulate in Kishinev, regarding the applicant's options for returning to the United States, and was told that the RTD had to be extended in the United States.

Counsel's assertions are persuasive. The memorandum cited by counsel issued on November 23, 1999, by Bo Cooper, General Counsel, entitled, *Readmission of Asylees and Refugees Without Travel Documents*, states in pertinent part:

Overseas refuge travel document requests must meet the requirements set forth in 8 C.F.R. § 223.2(b)(2)(ii) . . . Therefore, an alien granted asylum or refugee status who leaves the country without obtaining the proper refugee travel document and fails to apply for such documentation within one year, or whose refugee travel document has expired, will be inadmissible to the United States. In such cases, parole of such individuals to the United States may be appropriate. Parole has historically been used to facilitate the return of refugees and asylees stranded outside the United States.

Should an alien . . . allow his or her refugee travel document to expire before returning to the United States, a district director may consider a discretionary grant of parole.

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

(ii) Discretionary authority to adjudicate an application from an alien not within the United States. As a matter of discretion, a district director having jurisdiction over a port-of-entry or a preinspection station where an alien is an applicant for admission, or an overseas district director having jurisdiction over the place where an alien is physically present, may accept and adjudicate an application for a refugee travel document from an alien who previously had been admitted to the United States as a refugee, or who previously had been granted asylum status in the United States, **and who had departed from the United States without having applied for such refugee travel document . . .** (emphasis added).

As noted above, in order to file an application for RTD while not within the United States the applicant must have departed the United States without having applied for a RTD. The applicant in the present case had applied for and was issued a RTD, which expired while she was overseas. Accordingly, the applicant was not eligible to file for a RTD while residing overseas, but may be eligible for a parole by the District Director who has jurisdiction over her place of residence.

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.