

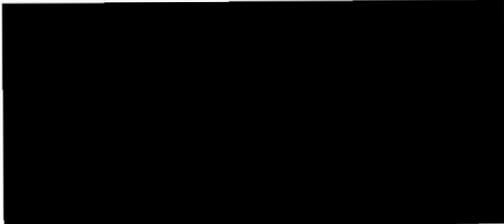


U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: MAR 28 2006

(LIN-05-037-51312 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 United Kingdom 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 9, 2005.

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 resides in Germany but states that prior to moving to Germany he contacted Citizenship and Immigration Services (CIS) in Boston and was informed that he could maintain his permanent resident status if he returned to the United States at least once a year. In addition, the applicant states the during a trip in September 2004 he was informed that he needed to apply for a travel document and made a special trip to the United States in November 2004, in order to comply with the requirement of being physically present in the United States when filing a Form I-131.

The record of proceeding reveals that the applicant is a lawful permanent resident of the United States. The applicant filed a Form I-131, which was received by the Nebraska Service Center on November 22, 2004, while he was residing abroad, as indicated by the address on the envelope. The applicant did not present documentary evidence to prove that he was physically present in the United States when the Form I-131 was filed. No exception regarding 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.