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FILE: Office: NEBRASKA SERVICE CENTER Date: DEC 15 2008
(LIN-07-154-53022 relates)

IN RE: [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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Michael Shumy
for

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the 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 China 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 Director denied the application after determining that the application was filed after the applicant had departed the United States. See *Director's Decision*, dated March 21, 2008.

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.

The record of proceeding reflects that the applicant was admitted into the United States as a lawful permanent resident on June 4, 2005. On May 4, 2007, the applicant filed an Application for Travel Document (Form I-131) with Citizenship and Immigration Services (CIS). On October 26, 2007, the Director requested that the applicant provide evidence to establish her actual date of departure from the United States. The applicant responded and the evidence indicates that the applicant departed the United States on February 4, 2007. Therefore, the Form I-131 was filed after the applicant departed the United States.

On appeal, the applicant does not dispute that she filed the Form I-131 while residing in China. The applicant states that she incorrectly filed an Application of Advance Permission to Return to Unrelinquished Domicile (Form I-191) on February 3, 2007, before she departed the United States for China. *Form I-290B*, dated April 10, 2008. On February 4, 2007 the applicant departed the United States for China and on February 12, 2007 she received a letter from the District Director, San Francisco, California stating that she filed the incorrect form for to apply for a travel document and returned her forms and the filing fee for the Form I-191. In the notice, the district director states that as a lawful permanent resident who is planning to be outside the United States for more than one year, the proper application for re-entry would be an Application for a Travel Document (Form I-131). The district director also states that the Form I-131 must be sent to the Nebraska Service Center with a \$170 fee and two passport-style photographs. *Director's Letter*, dated February 20, 2007.

Although it is regrettable that the applicant initially submitted the incorrect form for applying for a travel document, the fact remains that the Form I-131 was filed after the applicant departed the United States. The Act provides no exception regarding the physical presence requirement 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 after an absence of one year or more, and does not possess a reentry permit, he/she should contact a United States consulate abroad for further information regarding possible options for return to the United States.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.