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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

LIN 06 142 50264

Office: NEBRASKA SERVICE CENTER

Date: JUL 07 2008

IN RE:

JUN XIN LI

APPLICATION:

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

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, 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 The director's decision will be withdrawn and the matter remanded for further consideration.

The applicant is a native and citizen of China, who seeks to obtain a refugee travel document pursuant to 8 C.F.R. § 223.1(b). The Acting Director concluded that the applicant did not hold valid refugee status under section 207 of the Act, or valid asylum status under section 208 of the Act, or permanent resident status as a direct result of his refugee or asylee status at the time the application was filed. He denied the application accordingly. *See Acting Director's Decision*, December 11, 2006.

The applicant completed Part 2, box b, on his Application for Travel Document (Form I-131) that states:

I now hold U.S. refugee or asylee status and I am applying for a Refugee Travel Document.

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, the applicant states that he believes that the acting director erred in finding that he is not an asylee. He submits a copy of the immigration judge's decision in his asylum case and a copy of his Form I-94 showing a grant of asylum on November 19, 2004.

The director's denial of the applicant's Form I-131 was based on his determination that the applicant did not hold any status that would qualify him for the issuance of a refugee travel document. Documentation contained in the record reflects that on May 26, 2005, a Form I-94, Departure Record, was issued to the applicant, stamped "ASYLUM STATUS GRANTED BY THE IJ ON 11-19-04 PURSUANT TO SECTION 208 INA VALID INDEFINITELY." The record also includes documentation that appears to indicate that the referenced Form I-94 was issued to the applicant in error as he received only a conditional grant of asylum from the immigration judge. An asylum applicant conditionally granted by the immigration judge would normally be issued an employment authorization document pursuant to 8 C.F.R. § 274.12(c)(8)(ii), rather than a Form I-94 indicating he held full asylee status.

As the record fails to reliably identify the status held by the applicant, the AAO will withdraw the director's decision. It will remand the matter to him for further consideration, including referral of the matter to the District Director, Citizenship and Immigration Services (CIS), New York, New York for resolution of the applicant's status within the Department of Homeland Security and appropriate action.

ORDER: The director's decision will be withdrawn. The appeal will be remanded to the director for further consideration, including referral to the CIS District Director, New York, New York for resolution of the applicant's status.