

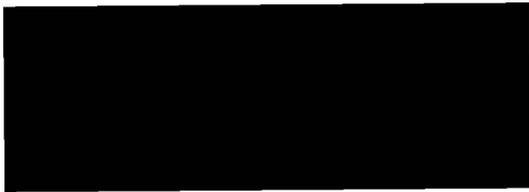
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **APR 06 2009**
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IN RE Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

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.

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 The director's decision will be withdrawn and the matter remanded for continued processing of the applicant's I-131 application for a refugee travel document.

The applicant is a native and citizen of Cuba, who seeks to obtain a refugee travel document pursuant to 8 C.F.R. § 223.1(b). The director denied the application because the applicant was paroled into the United States as a public interest parolee, not as a refugee, and he, therefore, does not qualify for a refugee travel document. On appeal, counsel states that the applicant was granted asylum status in 1985 and he is, therefore, eligible 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.

A review of the record reveals the following facts and procedural history: The applicant arrived in the United States on May 27, 1980 during the Mariel Cuban boatlift. On May 29, 1980, the applicant was paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA). On March 20, 1984, the legacy Immigration and Naturalization Service (INS) issued the applicant a letter advising him that his parole status was terminated due to his criminal conviction and placed him into exclusion proceedings before an immigration judge.¹ During exclusion proceedings, the applicant submitted a request for asylum and withholding of deportation. On January 19, 1986, the immigration judge granted the applicant's asylum application "for a period of one year."

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. The

¹ Service records indicate that on September 17, 1982, the applicant was sentenced to 10 years of confinement for robbery in the State of New Jersey.

director noted only that the applicant was paroled into the United States during the Mariel Cuban boatlift. The director failed to mention the applicant's grant of asylum status in 1986.

The director erred in denying the applicant's application for a refugee travel document. The record shows that the applicant was granted asylum status on January 19, 1986 pursuant to section 208 of the INA. Although the language in the immigration judge's decision indicates that the grant of asylum was for "a period of one year," asylum status does not expire; it must be formally terminated for an applicant to lose such status. 8 C.F.R. § 208.24(f). There is no indication in the record that the applicant's asylum status has been terminated. The applicant is, therefore, entitled to apply for a refugee travel document.

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 met that burden. Accordingly, the director's decision is withdrawn and the matter remanded for continued processing of the applicant's application for a refugee travel document.

ORDER: The director's decision is withdrawn and the matter remanded for continued processing of the applicant's application for a refugee travel document.