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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]
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Office: NEBRASKA SERVICE CENTER

Date: **AUG 04 2009**

IN RE: Applicant: [REDACTED]

PETITION: Application for 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.

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted. The previous decision will be affirmed and the application will be denied.

The applicant is a native and citizen of India who seeks to obtain a refugee travel document under 8 C.F.R. § 223.1(b). The director denied the application after determining that the applicant was not eligible for a 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.

The evidence of record indicates that the applicant entered into the United States without inspection on August 4, 1981. On June 8, 2005, the applicant was deported from the United States, and on July 9, 2005, he was paroled into the United States until July 8, 2006, under section 212(d)(5) of the Immigration and Nationality Act (INA), for adjustment of status. The applicant submitted an I-131 application on February 8, 2007. In Part 2, "Application Type," the applicant checked box b., indicating that he held U.S. refugee or asylee status and was applying for a refugee travel document.

The director denied the Form I-131 because the applicant failed to establish that he was a conditional resident or lawful permanent resident and was thus ineligible for a reentry permit. The AAO rejected a subsequent appeal as untimely filed. On motion, the applicant requests an advance parole document to visit his parents in India.

The record indicates that the applicant has a pending I-687, Application for Status as a Temporary Resident under Section 245A of the INA. While an applicant who has a pending application for lawful permanent residence status may submit an application for an advance parole document, the

applicant in this matter indicated on his Form I-131 that he held U.S. refugee or asylee status and was applying for a refugee travel document. He did not indicate on the Form I-131 that he was seeking an advance parole document. Once U.S. Citizenship and Immigration Services (USCIS) concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate classification. *Brazil Quality Stones, Inc., v. Chertoff*, Slip Copy, 2008 WL 2743927 (9th Cir. July 10, 2008).

Accordingly, the director properly denied the Form I-131 because the applicant indicated that he was seeking a reentry permit and he was unable to establish that he is a conditional resident or lawful permanent resident. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The previous decision of the AAO, dated December 17, 2008, is affirmed. The petition is denied.