

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



I2

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
LIN-09-110-50276

Date: **AUG 04 2009**

IN RE Applicant: [REDACTED]

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

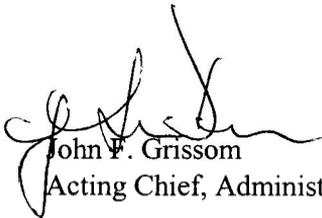
ON BEHALF OF APPLICANT:

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.

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 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 application will be denied.

The applicant is a native and citizen of India, who seeks to obtain a refugee travel document pursuant to 8 C.F.R. § 223.1(b). The director denied the application on April 27, 2009, finding that the applicant did not hold valid refugee status pursuant to section 207 of the Immigration and Nationality Act (the Act), valid asylum status pursuant to section 208 of the Act, or was a permanent resident and received such status as a direct result of the applicant's asylee or refugee status. Counsel submitted a timely appeal on May 27, 2009. On appeal, counsel claims that U.S. Citizenship and Immigration Services (USCIS) abused its discretion in denying the application, as the Immigration Judge granted the applicant's withholding of removal application.

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 finds that on February 25, 2002, an Immigration Judge ordered the applicant's application for asylum under section 208 of the Act denied and the applicant removed to India. The Immigration Judge also ordered the applicant's application for withholding of removal under section 241(b)(3) of the Act granted, and the applicant's removal to India withheld.

On appeal, counsel claims that USCIS abused its discretion by denying the applicant's application for a refugee travel document. Counsel states: "Clearly, the Applicant is a 'refugee' within the meaning of the Immigration and Nationality Act and accordingly, is entitled to a refugee travel document."

A grant of withholding of removal under section 241(b)(3) of the INA is not equal to a grant of asylum under section 208 of the INA or a grant of refugee status under section 207 of the INA. The "benefits" of being granted withholding of removal are that an applicant: (1) cannot be removed to a specified country unless The Department of Homeland Security can show that changed country conditions have

reduced the risk of persecution; and (2) may apply for and receive employment authorization to work in the United States. The Department of Homeland Security can, however, remove the person to any country not covered by the withholding grant. Furthermore, an applicant who is granted withholding of removal still has a final order of removal against him. Therefore, if an applicant travels outside of the United States he will self-execute his removal order. Withholding of removal also does not lead to permanent resident status and does not grant derivative benefits to an applicant's spouse or children.

The regulation at 8 C.F.R. § 223.2(b)(2)(i) states clearly that a refugee travel document may be granted only to an applicant who "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." Nothing that counsel presents on appeal contains new facts or shows that the director's decision was based upon an incorrect application of law or USCIS policy. Accordingly, the appeal must be dismissed.

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 director's decision will not be disturbed. The application is denied.

ORDER: The appeal is dismissed. The application is denied.