



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy

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[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

FEB 26 2009

(LIN-08-003-58708 relates)

IN RE:

Applicant:

[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:

[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.

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 applicant is a native and citizen of Taiwan 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 from the United States.

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 July 17, 2003. On October 1, 2007, the applicant filed an Application for Travel Document (Form I-131) with U.S. Citizenship and Immigration Services (USCIS). In Part 3, item #1 of the Form I-131, the applicant indicated his date of departure as July 8, 2007. In a May 8, 2008 Request for Evidence (RFE), the director asked the applicant to indicate the date that he actually departed from the United States and to provide copies of his transportation/airline tickets and passport stamps to show entries into the United States and other countries. In response, counsel indicated that the applicant departed from the United States on July 8, 2007 and supplied the requested copies.

The director denied the application because the applicant filed it while he was outside of the United States. On appeal, counsel claims that the application was filed on July 7, 2007. Counsel does not provide any evidence to support the claimed filing date of July 7, 2007, however, and the record clearly shows that USCIS received the application on October 1, 2007. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

It is clear from the evidence in the record that the applicant was not physically present in the United States on October 1, 2007, the date on which his application was accepted for filing by USCIS. Thus, the Form I-131 was filed after the applicant departed from the United States. The Act provides no exception regarding the physical presence requirement at the time of filing a Form I-131 to obtain a reentry permit. Since the application was not filed until after the applicant had departed from the United States, the application may not be approved as a matter of law.



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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.