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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
(LIN-08-177-52881 relates)

Date: JUN 29 2009

IN RE Applicant:



APPLICATION: Application for Travel Document Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. § 1203.

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 applicant is a native and citizen of Ecuador 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. [Emphasis added.]

A review of the record reveals the following facts and procedural history: The applicant was admitted into the United States as a lawful permanent resident on April 1, 2008, and re-entered Canada on April 2, 2008. On June 2, 2008, the applicant filed an Application for Travel Document (Form I-131) with U.S. Citizenship and Immigration Services (USCIS). Regarding the purpose of her trip at Part 4 of the Form I-131, the applicant stated: "The U.S. incorporated company my husband is working for has asked him to stay in Canada for another 2 years." The applicant indicated that Canada was the country to which she intended to travel. On January 14, 2009, the director requested that the applicant submit evidence to document that the applicant was in the United States at the time she filed the Form I-131. In response, the applicant indicated that the application "was done outside the US, from Canada." The applicant submitted various supporting documents, including an itinerary of her entries and exits to and from the United States in the past year, and copies of airline tickets and relevant pages from her passport. According to her February 9, 2009 letter, the applicant was admitted into and exited the United States on May 19, 2008.

The director denied the Form I-131 because the applicant was not present in the United States when she filed her application. On appeal, the applicant does not dispute that she filed the Form I-131 while outside of the United States. The applicant quotes from the director's decision: "Please be advised that a lawful permanent resident of the United States in possession of Form I-551 who intends to reenter the United States within one year of his/her departure, may not require a reentry permit to reenter."

As stated by the director, a lawful permanent resident is not required to obtain a reentry permit if he or she remains outside of the United States for less than one year. Nevertheless, because the

applicant did apply for a reentry permit, she must meet the eligibility criteria set forth at 8 C.F.R. § 223.2, which requires the applicant's physical presence in the United States at the time an application is made to USCIS. Here, the applicant filed the Form I-131 after she departed from the United States.

The Act provides no exception regarding the physical presence requirement at the time of filing a Form I-131 for 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.

Beyond the director's decision, a copy of the applicant's current reentry permit shows that it is valid until July 6, 2008. An application for a reentry permit shall be denied if the applicant was previously issued a reentry permit which is still valid, unless it was returned to USCIS or was lost. 8 C.F.R. § 223.2(c)(1). Here, the applicant filed her Form I-131 on June 2, 2008, while her previously issued reentry permit was still valid. For this additional reason, the application may not be approved.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

If a lawful permanent resident seeks to reenter after an absence of one year or more, and does not possess a reentry permit, he or she should contact a United States consulate abroad for further information regarding possible options for return to the United States.

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.