

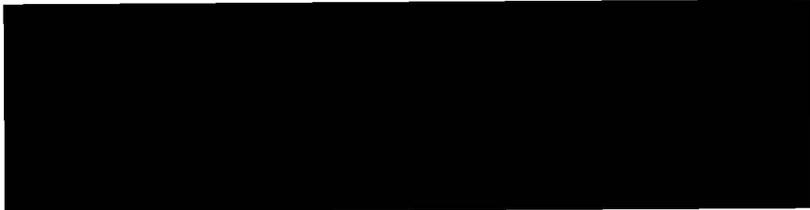
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



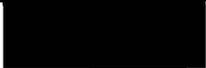
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

I 2



FILE:



Office: ROME, ITALY

Date:

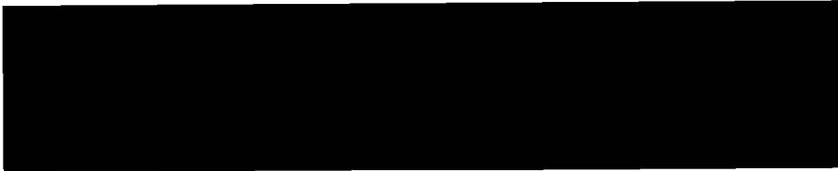
MAR 04 2009

IN RE: Applicant:



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

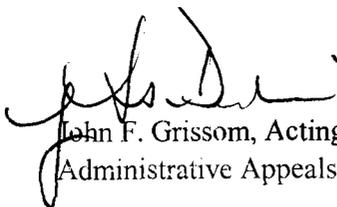
ON BEHALF OF APPLICANT:



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 Acting District Director, Rome, Italy, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Uzbekistan, 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, who was outside of the United States when he filed his application, had been outside of the United States for more than one year at the time he filed his application.

On appeal, counsel submits a brief and additional evidence. Counsel states that the applicant's failure to file his application within the required time period should be excused and that the director's denial of the application on this ground is an abuse of discretion.

The regulation at 8 C.F.R. § 223.1(b) states in pertinent part:

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)(ii) states:

Discretionary authority to adjudicate an application from an alien not within the United States. As a matter of discretion, a district director having jurisdiction over a port-of-entry or a preinspection station where an alien is an applicant for admission, or an overseas district director having jurisdiction over the place where an alien is physically present, may accept and adjudicate an application for a refugee travel document from an alien who previously had been admitted to the United States as a refugee, or who previously had been granted asylum status in the United States, and who had departed from the United States without having applied for such refugee travel document, provided:

- (A) The alien submits a Form I-131, Application for Travel Document, with the fee required under § 103.7(b)(1) of this chapter;
- (B) The district director is satisfied that the alien did not intend to abandon his or her refugee status at the time of departure from the United States;
- (C) The alien did not engage in any activities while outside the United States that would be inconsistent with continued refugee or asylee status; and
- (D) The alien has been outside the United States for less than 1 year since his or her last departure.

The evidence of record indicates that the applicant was granted asylum status in May 2001. The evidence of record also establishes the following facts and procedural history:

- The applicant received a refugee travel document from U.S. Citizenship and Immigration Services (USCIS), which he used in December 2005 for travel to Saudi Arabia.
- In January 2006, the applicant was traveling back to the United States from Saudi Arabia through Ethiopia. In Ethiopia, the applicant was refused permission to board his flight to the United States because his name was on the Transportation Security Administration's (TSA) "No Fly" list. The Ethiopian authorities confiscated the applicant's documents until April 2006, at which time the applicant began making plans for travel arrangements to third countries so that he could eventually return to the United States.
- In May 2006, the applicant entered Turkey. While still in Turkey in October 2006, the applicant's refugee travel document expired.
- On November 24, 2006, the USCIS Rome field office received the applicant's application for a refugee travel document (Form I-131). As part of that application, the applicant's wife submitted a personal check in the amount of \$170.00 to cover the filing fee. On November 30, 2006, the USCIS Rome field office rejected the applicant's Form I-131 because the fee was remitted in a form of payment that could not be cashed by the U.S. Embassy cashier. A notice from the USCIS Rome field office rejecting the applicant's Form I-131 was addressed to the applicant in care of the U.S. Embassy in Ankara, Turkey.
- On December 22, 2006, counsel submitted a "revised application that amends and supplements the information submitted on November 1, 2006." Along with this submission was a cashier's check in the amount of \$190.00 to cover the filing fee.
- On January 4, 2007, the USCIS Rome field office again rejected the Form I-131 because the check to cover the filing fee was an incorrect amount. The letter, which was addressed to the applicant in care of his attorney, instructed the applicant to remit a check in the amount of \$170.00.
- In his January 12, 2007 response to the rejection notice, counsel submitted a new cashier's check for \$170.00. Counsel stated further that, because the *Checklist for an I-131 Application for Refugee Travel Document* on the U.S. Embassy's website stated that the fee for a Form I-131 was \$190.00, he was also submitting a cashier's check for \$190.00. Counsel asked the USCIS Rome field office to return the check that was not needed to cover the filing fee. In a January 18, 2007 letter, the USCIS Rome field office returned the cashier's check for \$190.00, stating: "We confirm that there was a mistake in our¹ website and that the correct fee for I-131 [refugee travel document] applications is US \$170.00. The applicant's Form I-131 was receipted as received on January 17, 2007.

In the denial letter, the acting district director noted that, because the applicant filed his Form I-131 on January 17, 2007 and had departed from the United States on December 30, 2005, the application

¹ The AAO notes that the website, <http://www.usembassy.it/dhs/uscis/forms/I-131-checklist.pdf>, where counsel accessed the *Checklist for an I-131 Application for Refugee Travel Document*, appears to be a U.S. Embassy website, not a USCIS website.

could not be approved, as the applicant had applied for the document after being out of the United States for more than one year.

On appeal, counsel contends that the proper filing date should be December 27, 2006, the date on which Federal Express records indicate that the USCIS Rome field office received the applicant's Form I-131. Counsel states that the USCIS Rome field office's rejection of the applicant's \$190.00 filing fee in December 2006 was not the fault of the applicant, as the applicant had consulted and relied upon the information in the *Checklist for an I-131 Application for Refugee Travel Document* that was posted on the U.S. Embassy's website. Counsel states further that the acting district director maintains the discretion to consider an application that has been filed more than one year after an applicant's departure from the United States, and that the United States has an obligation to protect the applicant under the *Protocol Relating to the Status of Refugees* (1967) and the *Convention Relating to the Status of Refugees* (1951).

The primary issue in this proceeding concerns the filing date of the applicant's Form I-131. According to counsel, had the acting district director accepted the submission of the applicant's I-131 as of the date that the Federal Express package was received at the USCIS Rome field office, the applicant would have filed his application within one year of his departure from the United States and would, therefore, be eligible for the issuance of a refugee travel document. Thus, it is critical to determine whether the acting district director's assignment of a January 17, 2007 filing date for the Form I-131 was correct. As we shall discuss, the AAO affirms the director's decision to receipt the application as of January 17, 2007.

An application received in a USCIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. An application which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. 8 C.F.R. § 103.2(a)(7)(i),

Fees shall be submitted with any formal application or petition prescribed in this chapter in the amount prescribed by law or regulation. 8 C.F.R. § 103.7(a)(1). For applications that are submitted from outside of the United States, the remittance may be made by bank international money order or foreign draft drawn on a financial institution in the United States and payable to the Department of Homeland Security. 8 C.F.R. § 103.7(a)(2).

The AAO preliminarily finds that the USCIS Rome field office correctly rejected the applicant's Form I-131 that he initially submitted on November 1, 2006. At that time, the applicant's wife submitted a personal check in the amount of \$170.00 to cover the filing fee. Although the amount of \$170.00 was correct, the fee was remitted by an improper form. In the record of proceeding is a copy of a November 30, 2006 rejection notice informing the applicant that "the Embassy cashier is unable to receive the form check that you have provided" The notice instructs the applicant to remit a check in the amount of \$170.00.

On appeal, counsel states that neither he nor the applicant received the November 30, 2006 notice from the USCIS Rome field office. The record contains, however, a copy of a cover letter from counsel to the USCIS Rome field office, dated December 22, 2006. In this cover letter, counsel states, "please find a revised application that amends and supplements the information submitted on November 1, 2006." Included in the submission was a check in the amount of \$190.00. Counsel

fails to explain why a new application and fee were submitted in December had neither he nor the applicant been aware of the application's rejection, or believed that the Form I-131 that the USCIS Rome field office had received on November 24, 2006 was pending adjudication.

As stated earlier in this decision, this December 2006 submission of the Form I-131 was also rejected, again correctly, because the applicant, while remitting the fee on a proper form, provided an incorrect amount for the fee. By the time the USCIS Rome field office received the correct fee and determined that it was properly filed, more than one year had elapsed since the applicant's departure from the United States.

Counsel contends on appeal that the applicant should not be punished for filing his application more than one year after his departure from the United States because the applicant had relied upon information in the *Checklist for an I-131 Application for Refugee Travel Document* regarding the fee amount.

It is clearly stated at 8 C.F.R. § 103.7(a)(1) that "fees shall be submitted . . . in the amount prescribed by law or regulation." (Emphasis added). The *Checklist for an I-131 Application for Refugee Travel Document* is neither a law nor a regulation. Although it is unfortunate that the *Checklist* contained inaccurate information, it could not be used a substitute for the regulation at 8 C.F.R. § 103.7(b), which sets forth the fee amounts of USCIS applications and petitions.² As the applicant failed to provide the correct fee in his December 2006 submission, the USCIS Rome field office properly rejected the application's filing for a third time. The applicant did not provide the correct fee amount in the correct form until January 17, 2007.

Counsel requests that USCIS assign a filing date of December 27, 2006, the date that Federal Express delivered the package to the USCIS Rome field office. USCIS, however, does not assign filing dates based upon an application's arrival date at a USCIS office. As provided for explicitly at 8 C.F.R. § 103.2(a)(7)(i), USCIS will not consider an application to be properly filed until it is signed, properly executed and accompanied by the correct fee. From a review of the record, the AAO concurs with the acting district director that the application was not properly filed until January 17, 2007, which is the date that it was signed, properly executed and accompanied by the correct fee.

The secondary issue to address is counsel's statement that the acting district director should have used her discretion to favorably adjudicate the Form I-131 despite its late filing because, according to 8 Immigration Law Service 2d PSD INS Operating Instr. §223a.1: "The time limits specified in the regulation for submission of an application for issuance of a refugees [sic] travel document shall not be regarded as inflexible."

Counsel's reliance on this publication is misplaced. The regulation at 8 C.F.R. § 223.2(b)(2)(ii) states specifically that a district director may accept and adjudicate an application for a refugee travel document provided that "the alien has been outside the United States for less than 1 year since his or her last departure." The regulation does not discuss a director's discretion to waive the one-year timeframe or to disregard Part 103 of Title 8, Code of Federal Regulations, regarding receipt dates

² The AAO notes that the USCIS website at www.uscis.gov also contains the most up-to-date fee schedule for USCIS applications and petitions, including how to request a fee waiver.

and fees. Furthermore, the source cited by counsel is not binding on USCIS officers in their administration of the Immigration and Nationality Act.

The approval of an application for a refugee travel document is solely at the discretion of USCIS. 8 C.F.R § 223.3(e). Based upon the record before it, the AAO agrees with the filing date of January 17, 2007 that the acting district director assigned to the applicant's Form I-131. The AAO also finds that the acting district director did not abuse her discretion in denying the application because it was filed more than one year after the alien's departure from the United States. As the applicant is ineligible for the document on this ground alone, the AAO shall not discuss counsel's statements regarding the United States' obligation to protect the applicant under the *Protocol Relating to the Status of Refugees* (1967) and the *Convention Relating to the Status of Refugees* (1951).

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.