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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
(LIN-08-220-52630 relates)

Date: **MAR 05 2009**

IN RE: Applicant: [REDACTED]

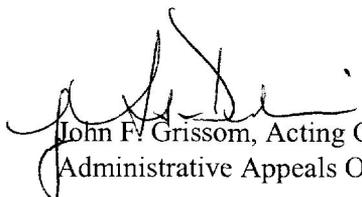
APPLICATION: Application for Refugee Travel Document Pursuant to 8 C.F.R. § 223.1(b).

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 Kosovo, 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 granted withholding of removal by an immigration judge, was not entitled to a refugee travel document because he was not granted asylum or refugee status. Counsel timely appealed the denial and submitted a brief stating that the applicant qualifies as a refugee under the *United States Convention of 1951* because he was granted withholding of removal.

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)(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 on January 5, 2001, the applicant's application for asylum was denied, but he was granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (INA). Counsel states that the applicant is entitled to a refugee travel document because a grant of withholding of removal under section 241(b)(3) of the INA "qualifies him as a refugee under the Convention." Counsel's arguments on appeal are not persuasive.

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.

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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.” As the applicant does not fall into one of these categories, his application for a refugee travel document must be denied.

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.