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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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Services

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MAY 06 2009

FILE: LIN-08-248-51957

Office: NEBRASKA SERVICE CENTER

Date:

IN RE Applicant:



APPLICATION:

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

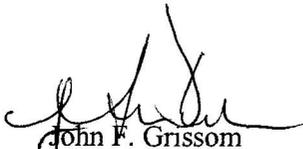
ON BEHALF OF APPLICANT:

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 South Africa who, at the time of the filing the Form I-131, sought 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 applicant was not a conditional resident or lawful permanent resident.

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.

A review of the record reveals the following facts and procedural history: On October 23, 2008, the applicant filed an Application for Travel Document (Form I-131) with U.S. Citizenship and Immigration Services (USCIS). In Part 2, "Application Type," the applicant checked box a., indicating that she was a conditional resident of the United States and was seeking a reentry permit. On January 6, 2009, the director requested that the applicant submit evidence of her conditional residence status. In response, the applicant stated that she was married to a United States citizen and that she had "filed all of the necessary immigration forms." She stated that she was seeking an "advance parole traveling document" so that she and her husband could attend her brother's wedding in South Africa. Attached to her statement was a newly-completed Form I-131, without fee, on which the applicant checked box d. in Part 2, indicating that she was applying for an advance parole document.

The director denied the Form I-131 because the applicant failed to establish that she was a conditional resident or lawful permanent resident and was, therefore, ineligible for a reentry permit. On appeal, the applicant states that she is qualified to receive an advance parole document based upon her submission of an adjustment of status packet.

The applicant is correct in stating that an applicant who is seeking lawful permanent residence status based upon marriage to a U.S. citizen may submit an application for an advance parole document when filing an I-130 Petition and I-485 Application concurrently. In this matter, however, the applicant indicated on her Form I-131 that she was seeking a reentry permit, claiming to be a conditional resident. She did not indicate on the Form I-131 that she was seeking an advance parole document. Although the applicant, in response to the director's request for evidence, submitted an amended Form I-131 without fee, U.S. Citizenship and Immigration Services (USCIS) will only consider the classification that the applicant annotates on the form that the Service has receipted. Once USCIS concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate

classification. *Brazil Quality Stones, Inc., v. Chertoff*, Slip Copy, 2008 WL 2743927 (9th Cir. July 10, 2008).

Accordingly, the director properly denied the Form I-131 because the applicant indicated that she was seeking a reentry permit and she was unable to establish that she is a conditional resident or lawful permanent resident. 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.