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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



U.S. Citizenship  
and Immigration  
Services

I<sub>2</sub>

OCT 25 2010

FILE:

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Applicant:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case 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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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).

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Russia and a citizen of [REDACTED] who seeks to obtain a refugee travel document pursuant to 8 C.F.R. § 223.1(b). The director denied the application after determining that it was filed after the applicant had departed from the United States.

On appeal, counsel states, in part, that U.S. Citizenship and Immigration Services (USCIS) disregarded the evidence, as the applicant requested that her case be considered as *nunc pro tunc* pursuant [to] 8 C.F.R. § 223.1(b).

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 by the Immigration Judge in Boston, Massachusetts, on June 27, 2006, pursuant to section 208 of the Immigration and Nationality Act (the Act). Counsel states that the applicant departed from the United States on August 9, 2006,

due to a family emergency. On December 21, 2009, the applicant filed the instant Form I-131, Application for Travel Document, at the Nebraska Service Center. On May 5, 2010, the director denied the application after determining that it was filed after the applicant had departed from the United States.

The AAO agrees with the director's finding. The regulation at 8 C.F.R. § 223.2(b)(2)(i) states that an application for a refugee travel document may be approved if filed by a person who holds either valid refugee or asylee status and is in the United States at the time of application. In this matter, the application was incorrectly filed with the Nebraska Service Center, as the applicant was not in the United States at the time of application. As the applicant is outside of the United States, the applicant must file in accordance with the procedures outlined at 8 C.F.R. § 223.2(b)(2)(ii). In view of the foregoing, the application may not be approved as a matter of law because it was filed after the applicant had departed from 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.