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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship and Immigration Services



PUBLIC COPY

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[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER

Date:

MAR 01 2011

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

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, with a fee of \$630. 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 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 Pakistan 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 it was filed after the applicant had departed from the United States. The director also denied the application due to abandonment because the applicant failed to appear for biometric processing.

Pursuant to 8 C.F.R. § 103.2(b)(15), the denial of an application due to abandonment may not be appealed. The AAO does not have appellate jurisdiction when an application is denied due to abandonment. Accordingly, the portion of counsel's appeal addressing the applicant's failure to appear for biometric processing will not be addressed.

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: The applicant was admitted into the United States as a lawful permanent resident on April 9, 2006. She subsequently filed an Application for Travel Document (Form I-131) with U.S. Citizenship and Immigration Services (USCIS), which was approved on September 4, 2007. On September 12, 2007, a reentry permit was mailed to the applicant, and on September 24, 2007, the reentry permit was returned as undeliverable. The applicant filed a second Form I-131, which was rejected on December 31, 2008, for an incorrect fee. On May 28, 2010, the applicant filed the instant Form I-131 with USCIS, and listed a U.S. address at Parts 1 and 2 of the Form I-131. Regarding the information requested in Parts 3, 4, and 5, the applicant referred to an attached letter dated May 3, 2010, in which she explained, in part, that she had been waiting for a reentry permit since her initial filing in June 2007, and that she was currently in Pakistan and waiting to travel to the United States. The director denied the Form I-131, concluding that the Form I-131 was filed after the applicant departed the United States.

On appeal, counsel states, in part, that the applicant was in the United States at the time the original Form I-131 was filed, and that it was the fault of USCIS for not delivering the reentry permit. As supporting documentation, counsel submits letters of inquiry from the applicant indicating, in part, that she had been in Pakistan since July 2007, and a letter dated February 2, 2010, from USCIS in Lincoln, Nebraska, stating, in part, that: the reentry permit was mailed to the applicant on September 12, 2007, and returned as undeliverable on September 24, 2007; the reentry permit was held for one

year and ultimately destroyed because a change of address was not received from the applicant; and a new application with fee would need to be filed.

Counsel's assertion that the petitioner filed the original Form I-131 while she was present in the United States, is noted. USCIS regulations, however, affirmatively require an applicant to establish eligibility for the benefit it is seeking at the time the application is filed. 8 C.F.R. 103.2(b)(1). Each application filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In this case, the applicant filed the instant Form I-131 with USCIS on May 28, 2010, while she was in Pakistan. Thus, as the applicant was not present in the United States at the time the instant application was filed with USCIS, it is concluded that the application may not be approved.

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 has not established that she filed the Form I-131 while she was present in 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 applicant has not established that she filed the Form I-131 while she was present in the United States, the application may not be approved as a matter of law.

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.