



U.S. Citizenship
and Immigration
Services

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[REDACTED]

Date: Office: ROME, ITALY FILE: [REDACTED]

NOV 01 2012

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Refugee Travel Document Pursuant to Section 223.1(b).

ON BEHALF OF APPLICANT:

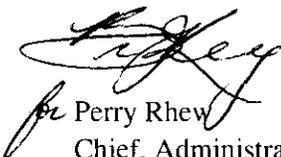
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INSTRUCTIONS:

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 by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director (director), Rome, Italy and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Iraq, 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 asserts that the applicant's Form I-131 was properly filed and should be adjudicated on its merits.

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 record of proceeding reflects that the applicant was admitted to the United States as a refugee on January 5, 2011. The applicant departed the United States on April 4, 2011 and has remained outside the United States since that time. On April 4, 2012, the applicant submitted his application for a refugee travel document with the United States Citizenship and Immigration Services (USCIS) office in Rome, Italy, without the filing fee. The application was rejected as improperly filed. On April 11, 2012, the applicant submitted the required fee for the application. The director accepted the application as properly filed on April 11, 2012, and on June 22, 2012, the director denied the application. In the denial letter, the director noted that, when the application for the refugee travel document was properly filed with the required fee, the applicant had already been outside the United States for more than one year since his last departure.

On appeal, counsel contends that the proper filing date should be April 4, 2012, the date the USCIS Rome field office received the Form I-131 application without the filing fee, and therefore the application was timely filed. Counsel asserts that the fee that was submitted "some mere 7 days after the one-year deadline," was a consequence of the applicant's *pro se* preparation of the application and requests that the director accept April 4, 2012 as the proper filing date and adjudicate the application on its merit.

The primary issue in this proceeding concerns the filing date of the applicant's Form I-131 application. 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. The regulation at 8 C.F.R. § 103.2(b)(7)(i), which discusses receipt dates, states that an application or petition shall be regarded as properly filed when it is signed and executed and the required filing fee is attached. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions will not retain a filing date.

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).

In this case, the applicant did not properly submit his application with the correct fee until April 11, 2012, more than one year after his April 4, 2011 departure from the United States. As the applicant failed to provide the correct fee in his April 4, 2012 submission, the USCIS Rome field office properly rejected the application. As indicated above, rejected applications and petitions will not retain a filing date.

Counsel's contention that USCIS should assign a filing date of April 4, 2011, the date the office first received the application without the accompanying filing fee is erroneous and will be rejected. 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. The fee that should have accompanied the Form I-131 was not received by USCIS until April 11, 2012. Accordingly, the AAO concurs with the director that the application was not properly filed until April 11, 2012, which is the date that it was signed, properly executed and accompanied by the

correct fee. Accordingly, the applicant has failed to establish that he filed for a refugee travel document within one year after his departure from the United States as required by regulation at 8 C.F.R. § 223.2(b)(2)(ii).

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 is dismissed.

ORDER: The appeal is dismissed.