



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **NOV 07 2013** Office: ROME, ITALY FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron M. Rosenberg
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 Iran, 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 Form I-131, Application for Travel Document, had failed to establish that he did not intend to abandon his asylee status when he departed the United States without first obtaining a refugee travel document and he had failed to establish that his application should be approved in the exercise of discretion.

On appeal, the applicant submits a statement and other documents in support of the appeal. The applicant asserts that he did not abandon his asylum status and requests that his application for a refugee travel document be approved.

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.

Even if the applicant for a refugee travel document meets all that requirements just described, the decision regarding whether to approve or deny the application is solely at the discretion of the director. 8 C.F.R. § 223.2(e).

The applicant has the burden of establishing eligibility for issuance of a refugee travel document and a favorable exercise of discretion.

The evidence of record establishes the following facts and procedural history: The applicant was admitted into the United States on July 2, 1999, on a B-2 nonimmigrant visa with authorization to remain in the country until January 1, 2000. The applicant subsequently applied for asylum in the United States and on February 22, 2001, he was granted asylum status by an immigration judge. On March 29, 2001, the applicant filed Form(s) I-730 for his spouse and two children which were approved, and his family entered the United States as asylees. On April 13, 2002, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The applicant's Form I-485 application was subsequently denied on October 20, 2011. The Form I-485 applications for the applicant's spouse and children were approved. On March 6, 2001, July 14, 2003, and March 6, 2006, the applicant filed for and was approved for refugee travel documents, which the applicant used to travel outside the United States and subsequently successfully reentered the United States.

On December 9, 2010, the State of North Carolina [REDACTED] received a referral alleging that emotional abuse and domestic violence was taking place in the applicant's home. On December 16, 2010, the applicant's spouse filed for a temporary protective order against the applicant for domestic violence. A ten-day protective order was issued against the applicant. On December 23, 2010, the applicant violated the protective order. He was arrested and charged with one count of violation of a protective order, a misdemeanor. The applicant was subsequently released from custody and scheduled to appear in court on February 11, 2011 to respond to the misdemeanor charge of violating the protective order.

On January 4, 2011, the applicant filed a civil complaint against the North Carolina [REDACTED] and some of its employees in relation to the events that led to his arrest on December 23, 2010. On January 6, 2011, the applicant was issued an Iranian passport.¹ On January 12, 2011, the applicant and his spouse were served with a juvenile petition that alleged that the applicant's children were being neglected. The applicant's children were placed into foster care. The applicant and his spouse attended hearings on January 19, 21, and 24, 2011, in relation to the custody status of their children. At the conclusion of the January 24, 2011 hearing, the judge made a determination that the applicant's children should remain in the custody of [REDACTED] with no visitation by the applicant and his spouse until the next hearing date scheduled for February 9, 2011.

On January 27, 2011, the applicant sold his residence in the United States and on January 30, 2011, the applicant departed from the United States with his Iranian passport and without a refugee travel

¹ The record is not clear as to when the applicant submitted an application for the Iranian passport.

document that would allow him to reenter the United States. On October 21, 2011, the applicant filed a Form I-131, Application for Travel Document, with the United States Citizenship and Immigration Services (USCIS), Rome District Office. On February 17, March 5, and March 6, 2012, the director issued Requests for Evidence (RFE) requesting the applicant to submit evidence to demonstrate that he did not intend to abandon his asylee status at the time he left the United States on January 30, 2011, and that he did not engage in any activities while outside the United States that would be inconsistent with his continued asylee status. The applicant responded to the RFEs.

On March 29, 2013, the director issued a Notice of Intent to Deny (NOID), notifying the applicant of the deficiencies in the evidence he had submitted in support of his application. Specifically, the director notified the applicant that the evidence he submitted is substantively deficient and is insufficient to establish that he did not intend to abandon his asylee status at the time he departed the United States and that he deserves a favorable exercise of discretion. The applicant was granted 30 days to submit rebuttal or additional evidence in support of his application.

The applicant timely responded to the NOID, addressing the deficiencies noted by the director. On April 19, 2013, the director denied the application. In the denial letter, the director noted that the evidence submitted by the applicant in response to the RFEs and NOID is insufficient to overcome the grounds for denial clearly stated in the NOID. The director found that based on the evidence of record, the applicant intended to abandon his asylee status at the time he departed the United States, that the negative factors against the applicant outweighed the positive factors and denied the application as a matter of discretion.

On appeal, the applicant asserts that he did not intend to abandon his asylee status at the time he departed the United States. The applicant also asserts that "it has been a more than year and half I have applied to renew my Travel document. I have given all the facts and the documents that why I had to leave the USA without getting it renewed over in the USA." The applicant requests an oral argument.

The regulations provide that the requesting party must explain in writing why oral argument is necessary. USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, the applicant identified no unique factors or issues of law to be resolved. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

Thus, the issues to be decided in this case are (1) whether the applicant intended to abandon his asylee status at the time he departed the United States on January 30, 2011; and (2) whether the director abused his discretion in denying the application.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Based upon a *de novo* review of the record, the AAO agrees with the director's decision to deny the application for a refugee travel document.

The evidence of record strongly suggests that the applicant intended to abandon his asylee status at the time he departed the United States on January 30, 2011 and the applicant has failed to submit credible and probative evidence to the contrary. The record reflects that applicant applied for and was issued an Iranian passport – an action that is inconsistent with his continued asylum status. It is noted that the applicant applied for and was granted asylum in the United States because he established a well-founded fear of persecution by the Iranian government. Therefore, the applicant's affirmative action of procuring a passport from the Iranian government is evidence that the applicant no longer has a well-founded fear of going back to Iran. The applicant provided no evidence to show that he applied for a refugee travel document, or requested an expedited processing of his travel document and that such request was denied. Also, the applicant provided no evidence to demonstrate that he requested that the travel document, when approved be mailed to a U.S. Embassy abroad for him and that such request was denied. The applicant did not notify the North Carolina court that he would not be available to attend the February 9, 2011 hearing regarding the custody status of his children or request a postponement of the hearing.

The applicant's claim that he departed the United States without first obtaining a refugee travel document because he and his spouse were at risk of harm from the local authorities in North Carolina is not substantiated by the record. Accordingly, the AAO finds that the applicant's series of actions prior to departing the United States on February 9, 2011, is evidence that he intended to abandon his asylee status in the United States.

The approval of an application for a refugee travel document is solely at the discretion of USCIS. 8 C.F.R § 223.3(e). Based upon the record before it, the AAO agrees with the director's determination that the applicant intended to abandon his asylee status at the time he departed the United States on January 30, 2011. The applicant has not provided sufficient credible and probative evidence to the contrary. The AAO also finds that the director did not abuse his discretion in denying the application because the positive factors supporting approval are outweighed by the negative factors against the applicant.

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.