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U.S. Citizenship
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Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

OCT 10 2007

(LIN-06-150-50006 relates)

IN RE:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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 China 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 the application was filed after the applicant had departed the United States. See *Director's Decision* dated February 15, 2007.

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.

On April 24, 2006, the applicant filed an Application for Travel Document (Form I-131) with Citizenship and Immigration Services (CIS). On July 24, 2006, the Director requested that the applicant provide evidence to establish his actual date of departure from the United States. The applicant responded and the evidence indicates that the applicant departed the United States on February 28, 2006. Therefore, the Form I-131 was filed after the applicant departed the United States.

On appeal, the applicant does not dispute that he filed the Form I-131 while outside the United States. However, he states that he was attempting to extend his expired travel document. He states that his initial travel document was valid at the time he departed the United States on February 28, 2006. His initial travel document expired on April 28, 2006.

The regulation at 8 C.F.R. § 223.2 states in pertinent part:

- (d) Upon the return of the alien to the United States the permit shall be presented to the immigration officer at the port of entry, and upon the expiration of its validity, the permit shall be surrendered to the Service.

Thus, the regulations do not provide for extending an expired travel document. Instead, an applicant must surrender his or her expired travel document and apply for a new travel document.

Therefore, the fact remains that the Form I-131 was filed after the applicant departed the United States. The Act provides no exception for the physical presence requirement at the time of filing a Form I-131. Since the application was not filed until after the applicant had departed 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/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.