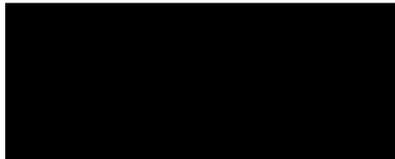




U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

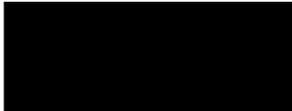


File: [Redacted]

Office: Nebraska Service Center Date:

OCT 23 2000

IN RE: Applicant:



Public Copy

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

IN BEHALF OF PETITIONER:



Identifying data removed to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the People's Republic of China who seeks to obtain a travel document under section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1203. The director denied the application for a reentry permit after determining that the record failed to show that the applicant is currently a lawful permanent resident or a conditional permanent resident of the United States. The applicant is a convicted felon. He was placed in deportation proceedings and he was granted asylum by the immigration judge on October 26, 1990. This application was filed with the Service on September 16, 1997.

The director determined that the applicant had been convicted of an aggravated felony committed within the United States: violation of Title 21, United States Code, Section 841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, Section 2 - Aiding and abetting in the possession and distribution of Heroin, a Schedule I Narcotic Drug, and Section 241(a)(11) of the Immigration and Nationality Act, in that he had been convicted on December 16, 1988 of a violation of any law or regulation of a state, the United States, or foreign country relating to a Controlled Substance, as defined in 21 United States Code 802, Violation of Title 21, United States Code, Section 2 - Aiding and abetting in the possession and distribution of Heroin, a Schedule 1 Narcotic Drug.

On appeal, counsel for the applicant states that her client did not lose his permanent residence upon receiving asylum.

The record reflects the following:

1. The applicant entered the United States as a P5-1 Immigrant on October 15, 1986.
2. The applicant was convicted on December 16, 1988 in the United States District Court, Eastern District of New York of violating Title 21, U.S.C. Section 841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, Section 2 - Aiding and abetting in the possession and distribution of Heroin, a Schedule I Narcotic Drug;
3. The applicant was sentenced to a prison term of thirty (30) months.
4. The applicant was placed in deportation proceedings on November 30, 1989. On October 26, 1990, the Immigration Judge granted the applicant's request for asylum as a relief from deportation.

Barring a subsequent reversal of a respondent's deportability finding by an appellate court or administratively, an alien's status as a lawful permanent alien ends upon the entry of an administratively final order of deportation. Matter of Cerna, 20 I&N Dec. 399 (BIA 1991).

The applicant is no longer a lawful permanent resident of the United States, and therefore he is not eligible for a reentry permit.

The application for a reentry permit may not be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. The applicant has not met that burden.

ORDER: The appeal is dismissed.