

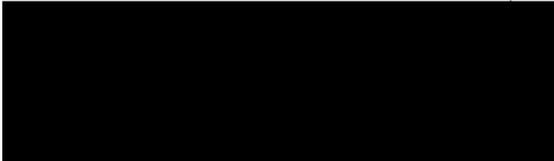


U.S. Department of Justice

Immigration and Naturalization Service

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



File: [Redacted] Office: Nebraska Service Center Date:

IN RE: Applicant: [Redacted]

AUG 21 2000

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

IN BEHALF OF PETITIONER: Self-represented

Public Copy
Identifying data deleted 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 Cuba, 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.

On appeal, the applicant submits a photocopy of a Form I-94 showing that he is an asylum applicant.

In pertinent part, section 223 of the Act provides 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 statute also requires that the application be made in good faith and that the applicant's proposed departure would not be contrary to the interests of the United States. A reentry permit allows a permanent resident to apply for admission to the United States upon his or her return from a trip abroad during the period of the permit's validity without the necessity of obtaining a returning resident visa.

With certain exceptions¹, regulations at 8 C.F.R. 223.2(b) allow for the approval of a reentry permit if the application (Form I-131) is filed by a lawful permanent resident or conditional permanent resident. The applicant must also be in the United States at the time of his or her application. Id.

The instant application was filed with the Service on January 15, 1999, indicating that the applicant was a permanent resident or conditional permanent resident of the United States. However, to date, the applicant has not validated this claim. The record shows that the applicant was paroled into the United States for an indefinite period under 212(d)(5) Public Interest Parole on May 23, 1980. This does not mean that the applicant has been granted classification as a permanent resident. Accordingly, the application for a reentry permit may not be approved.

¹See 8 C.F.R. 223.2(c) providing ineligibility where (1) a prior reentry permit is still valid, (2) certain extended absences have been taken by the applicant, or (3) the applicant is entitled to nonimmigrant diplomatic or treaty status and has not submitted the applicable waiver and/or tax exemption form. A review of the record reveals that none of these exceptions to the approval of a reentry permit is present in the matter at hand.

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.