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

[redacted]

File: [redacted] Office: Rome Date: AUG 21 2001

IN RE: Applicant: [redacted]

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

IN BEHALF OF APPLICANT: Self-represented

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

for Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The applicant is a native and citizen of Austria, 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 refugee travel document after determining that the applicant did not establish she did not intend to abandon her refugee status at the time of her departure from the United States. The director also denied the application for a refugee travel document after determining that the applicant did not establish that she did not engage in any activities while outside the United States that would be inconsistent with continued refugee status.

On appeal, the applicant's mother states that they made a mistake returning to Austria, and that the family wants to return to America.

The regulation at 8 C.F.R. 223.2(b)(2) allows for the approval of a refugee travel document if the application (Form I-131) is filed by a person who is in the United States at the time of application, and either holds valid refugee status under section 207 of the Act, valid asylum status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylum or refugee status.

The applicant was admitted to the United States with her parents and sibling as a refugee pursuant to section 207 of the Act on May 4, 1999. On May 30, 1999, the applicant and her family returned to Austria. The applicant's mother states that after arriving in the United States, they received an offer from Austria's charity organization, Reisewelt. The organization offered to find jobs for the applicant's parents and housing if they returned to Austria within one month. Upon returning, her parents did not receive jobs or housing, so presently the family desires to return to the United States.

The record indicates that the applicant was born on January 13, 1995 in Austria. The applicant's mother filed an Application for Travel Document (Form I-131) in her behalf at the American Embassy, Rome, Italy, on November 3, 1999.

The regulation at 223.2(b)(2)(ii) states in pertinent part:

> As a matter of discretion,... 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,...and who had departed from the

United States without having applied for such refugee travel document, provided:

(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 applicant has established that she and her family did intend to abandon their refugee status at the time of their departure from the United States. Further, the applicant and her family have not established that they did not engage in any activities while outside the United States that would be inconsistent with continued refugee or asylee status. Therefore, this application cannot be approved.

This application cannot be approved for an additional reason. The applicant has been outside the United States for more than two years.

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.