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

[redacted]

PUBLIC COPY

File: [redacted] Office: Rome Date: AUG 2 0 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 the Republic of Belarus, 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 left the United States without applying for a refugee travel document and has continued to live in Belarus without the intent of returning to the United States. The director also denied the application for a refugee travel document after determining that the applicant had remained outside the United States for more than one year.

On appeal, the applicant states that due to his father's illness, his father decided to leave the United States and return to Belarus with the whole family. The applicant states that at the time, he was too young to refuse his father, but now his father is quite well and he is able to leave his father in Belarus.

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 states that he was admitted to the United States with his parents and siblings as a refugee on July 26, 1996. On April 14, 1997, the applicant states that his entire family returned to Belarus because his father was ill and could not work. The applicant states he was the eldest son and had to go to Belarus to work and support the family. The applicant goes on to state that three years have passed and he would like to return to the United States with his wife and two children, who have been authorized parole.

The record indicates that the applicant was born on October 14, 1976 in the Republic of Belarus. The applicant filed an Application for Travel Document (Form I-131) at the American Embassy, Rome, Italy, on or about April 7, 2000.

The regulation at 8 C.F.R. 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:
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> (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 not established that he did not intend to abandon his refugee status at the time of his departure from the United States. The record is not convincing in establishing the beneficiary's father's need to return to Belarus with his family because he was ill, or the necessity for the beneficiary to work only in Belarus. Further, the applicant has been outside the United States for four years. Therefore, this application may not be approved.

This application may not be approved for an additional reason. The applicant had not established that he did not engage in any activities while outside the United States that would be inconsistent with continued refugee or asylee status.

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.