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]

File: [redacted] Office: Rome Date: AUG 23 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

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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 Kosovo (Yugoslavia), 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 that he did not intend to abandon his refugee status at the time of his departure from the United States.

On appeal, the applicant's representative states that the applicant did not at anytime state to anyone, including the Immigration Service, verbally or in writing, that he wished to abandon his refugee status.

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 his brother, sister-in-law, and niece as a refugee pursuant to section 207 of the Act on July 1, 1999. The applicant's representative states that on December 15, 1999, the applicant and his family returned to Kosovo after receiving word that their home was still intact and jobs were available. The applicant's representative also states that at their request, they helped them return to Kosovo to repair their home and reestablish their lives. However, upon their return, they found their home had been totally demolished, food was scarce and jobs did not exist. The applicant's representative states further that they are presently anxious to return to the United States.

The record indicates that the applicant was born on September 6, 1979 in Kosovo (Yugoslavia). The applicant's representative completed an Application for Travel Document (Form I-131) in his behalf. This application was later submitted to the Immigration Service office in the American Embassy, Rome, Italy, on October 26, 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:
>
> (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 and his family did not intend to abandon their refugee status at the time of their departure from the United States. Therefore, this application cannot be approved.

This application cannot be approved for additional reasons. The applicant has been outside the United States for more than one and one-half years. Further, the applicant and his 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.

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.