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: Nebraska Service Center Date: JUL 17 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 PETITIONER: 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

Robert P. Wiemann, Acting 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 sustained.

The applicant is a native and citizen of Romania who is seeking to obtain a reentry permit pursuant to section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1203.

The director determined that the record failed to establish that the applicant is a lawful permanent resident or conditional permanent resident of the United States. He noted that the record indicates that the applicant failed to successfully remove his conditional status in the given two year timeframe. The director, therefore, concluded that the applicant was not eligible to receive a reentry permit and denied the application on June 19, 1999.

On appeal, the applicant claims that he is a lawful permanent resident, and that his petition for removal of conditional status was extended through the year 2000. He submits additional evidence.

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.

With certain exceptions[1], 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. Additionally, regulations at 8 C.F.R. 223.2(b) require that the application be filed with the Service prior to departure from the United States.

The application for reentry permit was filed on December 8, 1998. The record reflects that the applicant's intended departure from the United States was January 15, 1999.

Regulations at 8 C.F.R. 223.3(a)(1) state, in part:

> A reentry permit issued to a conditional permanent resident shall be valid for 2 years from the date of

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[1]See 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.

> issuance, or to the date the conditional permanent resident must apply for removal of the conditions on his or her status, whichever comes first.

Regulations at 8 C.F.R. 216.4(a)(1) state, in part:

> Within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained permanent residence, the alien and the alien's spouse who filed the original immigrant visa petition or fiance/fiancee petition through which the alien obtained permanent residence must file a Petition to Remove the Conditions on Residence (Form I-751) with the Service.

On appeal, the applicant submits a copy of Service Form I-797 dated January 26, 1999, informing the applicant that his application to remove conditional residential status (Form I-751) was received by the Service on December 11, 1919 (sic), that his alien card is extended for one year, and that employment and travel are authorized.

To be eligible for issuance of a reentry permit, 8 C.F.R. 232.2(b)(1) requires that the applicant is in the United States at the time of application and that he or she is a lawful permanent resident or conditional permanent resident.

8 C.F.R. 223.3(a)(1) limits the validity of a reentry permit issued to a conditional permanent resident to two years from the date of issuance, or to the date the applicant must apply for removal of the conditions of his status. In this case, the applicant filed for removal of the conditions of his status on December 11, 1999, his alien registration card was subsequently extended for one year, and he was authorized employment and travel.

Accordingly, it is concluded that the applicant was eligible for issuance of a reentry permit at the time the application was filed. Therefore, the director's decision will be withdrawn and the application will be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden. The appeal will be sustained.

ORDER: The appeal is sustained.