



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



Public Copy

File: LIN 99 253 51944 Office: Nebraska Service Center Date: OCT 18 2001

IN RE: Applicant:

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 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 Vietnam, 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 applicant is a conditional resident and the applicant did not establish that she properly filed the Petition to Remove the Conditions on Residence (Form I-751) prior to the expiration of her conditional status.

On appeal, the applicant states that she filed Form I-751.

The regulation at 8 C.F.R. 223.2(b)(1) allows for the approval of a reentry permit if the application (Form I-131) is filed by a person who is in the United States at the time of application, and is a lawful permanent resident or conditional permanent resident.

The record of proceeding reveals that the Application for Travel Document (Form I-131) was filed on August 9, 1999. At the time of filing the application, the applicant was in the United States as a conditional permanent resident. The applicant planned to leave the United States as soon as possible for 90 days. The applicant became a conditional permanent resident on February 27, 1998 and her conditional resident status terminated on February 27, 2000.

The applicant has provided no evidence to establish that she filed for the removal of the conditions on her status within the 90 day period immediately preceding the second anniversary of the date on which the applicant obtained her conditional permanent residence. (8 C.F.R. 216.4(a)(1)). Failure to properly file Form I-751 shall result in the automatic termination of the applicant's permanent resident status. 8 C.F.R. 216.4(a)(6). Since the applicant has not been shown to be a lawful permanent resident or conditional permanent resident, the applicant is ineligible to receive a reentry permit.

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.