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: OCT 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: [redacted]

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 sustained.

The applicant is a native and citizen of Russia, 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's petition to remove the conditions on her status had not been approved.

On appeal, counsel states that the denial was based upon an incorrect application of law. Counsel states that the applicant's Petition to Remove the Conditions on Residence (Form I-751) is pending with the Service. Additional evidence has been submitted with the appeal.

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.

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 July 10, 2000. 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 on August 1, 2000, to accompany her husband on his trip to Italy, for one month. The applicant became a conditional permanent resident on April 7, 1998 and her conditional resident status terminated on April 7, 2000. The applicant filed for the removal of the conditions on her status on February 28, 2000, which is within the 90 day period (January 8, 2000 until April 7, 2000), immediately preceding the second anniversary of the date on which the applicant obtained conditional permanent residence. 8 C.F.R. 216.4(a)(1).

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

> Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition.

The applicant was a conditional permanent resident at the time of filing the application for a reentry permit. The applicant properly filed Form I-751, and consequently the applicant's

conditional resident status was extended until such time the I-751 is approved. There are no Service regulations that require the approval of an I-751 in order for a conditional resident to be eligible for a reentry permit. Therefore, the application for a reentry permit should have been approved.

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 met that burden.

ORDER: The appeal is sustained.