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: Nebraska Service Center Date: 0 4 SEP 2001

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Application for Refugee Travel Document Pursuant to Title 8, Code of Federal Regulations, Part 223.

IN BEHALF OF PETITIONER: 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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application for a travel document 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 seeks to obtain a refugee travel document persuant to Title 8, Code of Federal Regulations, Part 223. After requesting additional evidence, the director determined that the applicant had filed the application after having departed the United States. Accordingly, the director denied the application for a travel document.

On appeal, the applicant states "the information indicated in your letter that I had departed the United States is wrong. I am still in the United States and have never departed the United States. Now, that the Travel Document is being delayed, I therefore wish to travel on May 16, 2001." The record contains a letter from the applicant stating that he wishes to change the date of departure to August 20, 2001. The record does not contain any information regarding the applicant's current travel plans, now that his intended date of departure has passed.

The regulation at 8 C.F.R. 223.2(b)(2) states that, with certain exceptions,[1] an application for a refugee travel document "may be approved if 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 record shows the applicant was in the United States, as required, at the time the Service received the application. After the director requested additional evidence, the applicant mistakenly indicated that he wished to depart the United States on August 16, 2000. The director appears to have interpreted this as the date that the applicant departed the country. Instead, the record indicates that "August 16, 2000" is the date that the applicant was admitted into the United States as a refugee. The record contains a copy of the applicant's Form I-94, showing that the applicant and his family were initially admitted on this date as refugees, pursuant to section 207 of the Act.

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[1]8 C.F.R. 223.2(c) states that an application for a reentry permit or a refugee travel document shall be denied (1) if the applicant holds a prior reentry permit or refugee travel document which is still valid; (2) in the event of specified extended absences by the applicant; or (3) if the applicant is entitled to non-immigrant diplomatic or treaty status and has not submitted the applicable waiver and/or tax exemption form. These exceptions do not apply to the applicant in this case.

As the applicant was present in the United States at the time of application, the appeal will be sustained and the application will be approved. The record will be remanded to the director so that he may contact the applicant in the most expeditious manner available, in order to determine the applicant's intended date of travel.

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.