U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] (LIN 02 133 54779) Office: Nebraska Service Center Date: FEB 27 2003

IN RE: Applicant: [redacted]

Application: Application for Reentry Permit Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. § 1203

IN BEHALF OF PETITIONER: Self-represented

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for a travel document was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a lawful permanent resident of the United States, 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 had filed the application after having departed the United States.

On appeal, the applicant states that she is residing in Korea for the purpose of work. The applicant further states that she plans to be in Korea for less than four years.

Section 223(a) of the Act states, in pertinent part, "[a]ny alien lawfully admitted for permanent residence . . . who intends to depart temporarily from the United States may make application to the Attorney General for a permit to reenter the United States." By limiting eligibility to aliens who "intend" to depart, the language of the statute excludes aliens who have already departed the United States.

Regulations at 8 C.F.R. § 223.2(b)(1) state that, with certain exceptions,[1] an application for a reentry permit for a lawful permanent resident or conditional permanent resident "may be approved if filed by a person who is in the United States at the time of application."

Regulations at 8 C.F.R. § 103.2(a)(7)(i) state, in pertinent part:

> An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and . . . shall be regarded as properly filed when so stamped, if it is properly signed and executed and the required filing fee is attached or a waiver of the filing fee is granted.

According to this regulation, an application is properly filed not when it is mailed, but when it is received at a Service office.

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[1]8 C.F.R. § 232.2(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.

Therefore, by regulation, the applicant must be in the United States when the Service receives the application.

The applicant states that she departed the United States on February 16, 2002. The Service received the Form I-131 Application for Travel Document on March 13, 2002, almost one month after the applicant departed the United States.

As the record shows the applicant was not in the United States, as required, at the time the Service received the application, the director's decision to deny the application is affirmed.

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.