



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



File:



Office: Nebraska Service Center Date:

FEB 7 2001

IN RE: Applicant:



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

**PUBLIC COPY**

identification data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

IN BEHALF OF APPLICANT: Self-represented

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 dismissed.

The applicant seeks to obtain a reentry permit under section 223 of the Immigration and Nationality Act, 8 U.S.C. 1203. The director denied the application after determining that the applicant had filed the application after he had departed the United States. This application was filed with the Service on March 3, 2000.

On appeal, the applicant step-father states "I am appealing the refusal to grant my wife's son a re-entry permit, requested in order to allow him to remain with his mother while he continues to receive medical treatment for an injury he sustained last summer when he came to Toronto, Ontario, to visit his mother." He further states: ██████ did not leave the United States with the intention of abandoning his permanent residence and has never wavered from his desire to retain that status."

The regulations at 8 C.F.R. 223.2(b)(1) states that an application for reentry permit "may be approved if filed by a person who is in the United States at the time of application."

The regulations at 8 C.F.R. 103.2(a)(7)(i) states, 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. Therefore, by regulation, the applicant must be in the United States when the Service receives the application.

The applicant has confirmed that he departed the United States in July 1999. The applicant filed this application on March 3, 2000. He was not present in the U.S. on the date the application was filed with the Service. Therefore, the application for a reentry permit cannot be 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 not met that burden.

**ORDER:** The appeal is dismissed.