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

I2

[redacted]

File: [redacted] Office: Nebraska Service Center Date: FEB 12 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

PUBLIC COPY

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.

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 is a native and citizen of Honduras, who seeks to obtain a travel document under section 223 of the Immigration and Nationality Act, 8 U.S.C. 1203. The director denied the application for a travel document after determining that the applicant had filed the application after having departed the United States.

On appeal, the applicant's daughter states that her mother travelled to Honduras on December 7, 1998 to assist her children with losses sustained during Hurricane Mitch. She further states that her mother did not intend to stay in Honduras more than one year. She indicates that her mother was under medical care for an injury she sustained to her ankle and was unable to travel with a cast.

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 Service received Form I-131 Application for Travel Document on December 7, 1999. On the application, the applicant stated her date of departure as December 6, 1998.

The record shows the applicant was not in the United States, as required, at the time the Service received the application.

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.