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: JAN 9 2001

IN RE: Applicant: [redacted]

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

Public Copy

IN BEHALF OF PETITIONER: [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

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The application for a reentry permit 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 of Japan and a permanent resident of the United States, who seeks to obtain a reentry permit 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 certain extended absences had been taken by the applicant from the United States. This application was filed with the Service on May 9, 1997.

On appeal, the applicant submits a statement by the overseas personnel office of the international company which currently employs him as a researcher in Japan stating: "We feel that the skills which he has acquired are vital for his future assignment in the United States. We also understand that his permanent residence is in the United States."

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 statute also requires that the application be made in good faith and that the applicant's proposed departure would not be contrary to the interests of the United States. A reentry permit allows a permanent resident to apply for admission into the United States upon his or her return without the necessity of obtaining a returning resident visa.

8 C.F.R. 223.2(c)(2) provides that a reentry permit issued to a person who, since becoming a permanent resident, or during the last 5 years, whichever is less, has been outside of the United States for more than 4 years in the aggregate, shall be limited to a validity of one year.

The applicant has been outside of the United States for more than 4 years in the aggregate during the last 5 years and shall be issued a reentry permit with a validity of one (1) year.

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.