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]

Public Copy

FILE: [redacted] Office: Nebraska Service Center Date: MAY 11 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

IN BEHALF OF PETITIONER: [redacted]

Identification 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 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 citizen of Russia and a conditional permanent resident of the United States who is seeking to obtain a reentry permit pursuant to section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1203.

The director denied the application, stating that a conditional resident who has filed a Petition to Remove Conditions on Residence (Form I-751) is ineligible for a reentry permit if the Form I-751 petition has not yet been approved.

On appeal, counsel for the applicant's mother argues that the applicant is eligible for issuance of a reentry permit.

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.

With certain exceptions[1], regulations at 8 C.F.R. 223.2(b)(1) allow for the approval of an application for a reentry permit if the application (Form I-131) is filed by a lawful permanent resident or conditional permanent resident who is in the United States at the time of application.

This application for a reentry permit was filed on July 10, 2000. The record reflects that the applicant had properly filed a Form I-751 petition on August 30, 1999.

8 C.F.R. 216.4(a)(1) states, in pertinent part:

> Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition.

The applicant was a conditional permanent resident at the time of filing of the application for a reentry permit. Therefore, the application for a reentry permit should have been approved.

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[1]See 8 C.F.R. 223.2(c) providing ineligibility where (1) a prior reentry permit is still valid, (2) certain extended absences have been taken by the applicant, or (3) the applicant is entitled to nonimmigrant diplomatic or treaty status and has not submitted the applicable waiver and/or tax exemption form.

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.