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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: APR 16 2003
(LIN 02 291 51474)

IN RE: Applicant: [redacted]

Application: Application for Refugee Travel Document Pursuant to 8 C.F.R. § 223.1(b)

ON BEHALF OF APPLICANT:

PUBLIC COPY

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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 was denied by the Director, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant, a native of China, seeks to obtain a refugee travel document pursuant to 8 C.F.R. § 223.1(b). The director denied the application after determining that the application was filed after the applicant had already departed the United States.

The regulation at 8 C.F.R. § 223.1(b)(2)(i) allows for the approval of a refugee travel document if the application (Form I-131) is filed by a person who is in the United States at the time of application, and either holds valid refugee status under section 207 of the Act, valid asylum status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylum or refugee status.

The record reflects that the applicant was admitted to the United States as an asylee on April 23, 2001. On October 17, 2001, he departed the United States and returned to China without first having applied for a travel document. He remained in China and on September 21, 2002, filed an application for a refugee travel document with the Immigration and Naturalization Service, now the Bureau, office in New York, New York. The application was denied on October 16, 2002.

On appeal, counsel states that the district director's decision to deny the application ignored subparagraph (ii) of 8 C.F.R. § 223.1(b)(2), which provides for discretionary authority to adjudicate an application for a refugee travel document from an alien not within the United States.

The regulation at 223.2(b)(2)(ii) states, in pertinent part, that:

> As a matter of discretion, a district director having jurisdiction over a port-of-entry or a preinspection station where an alien is an applicant for admission, or an overseas district director having jurisdiction over the place where an alien is physically present . . . may accept and adjudicate an application for a refugee travel document from an alien who previously had been . . . granted asylum status in the United States . . . and who had departed from the United States without having applied for such refugee travel document, provided:
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> (B) The district director is satisfied that the alien did not intend to abandon his or her refugee status at the time of departure from the United States;

(C) The alien did not engage in any activities while outside of the United States that would be inconsistent with continued refugee or asylee status; and

(D) The alien has been outside of the United States for less than 1 year since his or her last departure.

The applicant is not currently an applicant for admission at a port of entry or pre-inspection station and his application was not filed with a district director having jurisdiction over the place where he is physically present. Therefore, subparagraph (ii) of 8 C.F.R. § 223.1(b)(2) does not apply in the applicant's case.

The applicant had already departed the United States when his application for a refugee travel document was filed with the Bureau office in New York, New York. 8 C.F.R. § 223.1(b)(2)(i) does not allow for the approval of a refugee travel document if the applicant is not physically present in the United States at the time of filing. Therefore, the appeal will be dismissed.

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.