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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: [redacted] Office: Nebraska Service Center Date: AUG 19 2003
(LIN 03 043 53011 relates)

IN RE: Applicant: [redacted]

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

IN BEHALF OF APPLICANT: [redacted]

PUBLIC COPY

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 The decision of the director will be withdrawn and the matter will be remanded to him for further action.

The applicant, a native of Somalia, seeks to obtain a refugee travel document pursuant to 8 C.F.R. § 223.1(b). In a decision dated January 22, 2003, the director denied the application, noting that the applicant will need to provide the results of his April 2, 2003 final hearing before an immigration judge before any benefits may be granted to him.

The regulation at 8 C.F.R. § 223.2(b)(2) 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 a refugee on August 30, 1999. On November 25, 2002, the applicant filed an application for a refugee travel document. Apparently, subsequent to his admission as a refugee and prior to his application for a refugee travel document, the applicant was placed in removal proceeding due to an unauthorized departure from the United States on July 28, 2002.

On appeal, counsel submits statements from the applicant and a friend concerning the applicant's departure from the United States on June 28, 2002.

Service instructions at O.I. § 103.3(c) provide, in part, that the record of proceeding must contain all evidence used in making the decision, including investigative reports and/or other derogatory information. Although the director notes in his decision that the applicant was to have a final hearing before an immigration judge on April 2, 2003, the record of proceeding fails to contain any evidence of that hearing or the reasons thereof.

The director's decision in the matter will be withdrawn. The appeal of the director's decision will be rejected, and the record remanded to the director to adjudicate the application and enter a new decision based on documentation contained in a record of proceeding that can be properly reviewed by the AAO. If that decision is adverse to the applicant, the director will certify his decision to the AAO for review accompanied by a properly prepared record of proceeding.

ORDER: The director's decision is withdrawn. The appeal is rejected. The matter is remanded to the director for further action consistent

with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the AAO for review.