



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 21482080

Date: MAY 6, 2022

Appeal of Nebraska Service Center Decision

Form I-131, Application for a Travel Document

The Applicant is a lawful permanent resident (LPR) of the United States who seeks a reentry permit under section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1203. A reentry permit allows a lawful or conditional permanent resident to apply for admission to the United States upon return from a trip abroad, and if that absence lasts more than one year, without the necessity of obtaining a returning resident visa.

The Director of the Nebraska Service Center denied the Form I-131, Application for a Travel Document, concluding that the Applicant had not established that he was physically present in the United States at the time he applied for the reentry permit, as required. On appeal, the Applicant asserts his eligibility and submits additional evidence. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for further proceedings consistent with the decision.

An applicant for a reentry permit must file the Form I-131 while in the United States and in status as a lawful or conditional permanent resident. 8 C.F.R. § 223.2(b)(1). The Applicant has the burden of establishing his eligibility for a reentry permit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). In this case, the Director determined that the record showed that the Applicant departed the United States on October 21, 2020, and he had not established that he was physically present in the United States when he filed his application on November 2, 2020, as required.

On appeal, the Applicant explains that he tried to leave, but “didn’t successfully make it” because although his flight initially departed the airport, the plane returned to the airport an hour later due to a technical issue and was subsequently delayed for six hours. The Applicant states that he decided to cancel his flight as he would have missed his connecting flight to China and that he did not leave the United States until February 20, 2021. He explains that because he was not requested to provide his documents evidencing his LPR status when he decided not to remain on the flight, he has no record that he did not depart the United States on October 21, 2020.¹ With the appeal, the Applicant submits

¹ The Applicant’s statement refers to this date as October 21, 2021, rather than October 21, 2020, which appears to be a typographical error based on other evidence in the record.

a refund notice from All Nippon Airways dated October 23, 2020, and a copy of an email from the airline, also sent on that date and with the same “reservation code,” regarding a reservation cancellation and refund request. In a supplemental statement on appeal, the Applicant asserts that he did not depart the United States on October 21, 2020.

As the Director determined, the Applicant’s evidence submitted below, including a January 2021 flight itinerary for China and a copy of a passport page with an admission stamp for his admission into China in February 2021 (rather than a full copy of his entire passport reflecting any and all his departures and admissions during the relevant period), is not sufficient to establish that he was physically present in the United States several months earlier when he filed his Form I-131 in November 2020. However, we note that the Director’s request for evidence (RFE) of the Applicant’s physical presence on the date he filed his Form I-131 in November 2020 notified the Applicant that USCIS records indicated he was out of the United States on that date, but it did not otherwise address information in the record indicating that he had physically departed the United States on an earlier date in October 2020. In response to the more specific information provided in the Director’s decision regarding his purported departure on that earlier date, the Applicant now submits new evidence on appeal that is relevant and material to this issue and which the Director has not had the opportunity to consider. The Applicant’s above-discussed supplemental statement provides a more detailed and probative explanation directly addressing and contesting the Director’s determination that he departed the United States on October 21, 2020. Both the airline refund notice and email confirming a flight cancellation proffered on appeal are dated two days after the Applicant’s purported departure in October 2020 and appear to corroborate his explanation on appeal that he did not leave the United States on that date due to technical issues with the flight resulting in a lengthy delay. Lastly, while our review of the administrative record and relevant databases discloses information indicating that the Applicant may have departed the United States on October 21, 2020, they also include conflicting information that appears to indicate that he did not in fact depart. We will therefore remand the matter to the Director to consider the new evidence on appeal in the first instance and assess the record as a whole in determining the Applicant’s eligibility for a reentry permit.

ORDER: The decision of the Director is withdrawn. The matter is remanded to the Director for the entry of new decision consistent with the foregoing analysis.