



EA

U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted]

Office: Charlotte (ATL)

Date: 18 NOV 2002

IN RE: Applicant:



APPLICATION:

Application to Preserve Residence for Naturalization Purposes
under Section 317 of the Immigration and Nationality Act, 8
U.S.C. § 1427

IN BEHALF OF APPLICANT:



**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 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 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Atlanta, Georgia, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant filed the above application seeking to preserve his residence for naturalization purposes under section 317 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1428, as a lawful permanent resident who will be absent from the United States for the purpose of employment as a missionary abroad.

The district director determined that the duties that the applicant performed abroad between October 30, 1998, and April 12, 2000, were that of a construction supervisor and were not religious in nature. The district director denied the application accordingly.

On appeal, the applicant states that the Service's use of the term "missionary" strictly adheres to Christianity. The applicant states that he goes to a Raleigh, North Carolina temple that does not have a full-time priest. He states that he performs "poojas" once a week. The applicant states that when he was in India he did everything that a church missionary does, including teaching children, doing maintenance work in the temple and arranging functions.

These assertions are not supported by the letter from Raj Parikh, trustee of the Shree Dwarkadish Temple in Parlin, New Jersey, who provided a letter dated November 26, 2000, in which he described the applicant's duties as "supervision of construction of main temple, prayer hall, guest quarters, landscaping and water supply." The letter contains no mention of religious duties.

The applicant also requests oral argument. 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. The Service has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases which involve unique factors or issues of law which cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

Section 317 of the Act provides, in part, that:

Any person who is authorized to perform ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or any person who is engaged solely by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States as a missionary, brother, nun or sister, who

(1) has been lawfully admitted to the United States for permanent residence,

(2) has at any time thereafter and before filing an application for naturalization been

physically present and residing within the United States for an uninterrupted period of at least one year, and

(3) has heretofore been or may hereafter be absent from the United States in connection with or for the purpose of performing the ministerial or priestly functions of such religious denomination, or serving as a missionary, brother, nun, or sister,

shall be considered as being physically present and residing in the United States for the purposes of naturalization within the meaning of section 316(a), notwithstanding any such absence from the United States, if he shall in all other respects comply with the requirements of the naturalization law. Such person shall prove to the satisfaction of the Attorney General that his absence from the United States has been solely for the purpose of performing the ministerial or priestly functions of such religious denomination, or of serving as a missionary, brother, nun, or sister.

The applicant was lawfully admitted for permanent residence on August 5, 1993. He departed the United States in August 1994 and returned in August 1995, departed in March 1996 and returned in March 1998, departed in November 1998 and returned in April 2000. The present application was received at the Service office on December 19, 2000.

Under the present statute, a person in the above category who is absent from the United States in the religious capacity described above will be considered as physically present and residing in the United States during such absence for naturalization purposes if the following conditions are met in sequence.

(1) After his or her lawful admission for permanent residence, the applicant must, at any time before filing his or her petition for naturalization, have been physically present and residing within the United States for an uninterrupted period of at least one year. Unlike the general class of approvable absences, this applicant's one-year residence need not precede his or her departure from the United States.

(2) The applicant must have been absent from the United States temporarily to perform the religious duties described above.

(3) The applicant must prove to the satisfaction of the Attorney General that his or her absence from the United States was solely for the purpose of performing such duties and that his or her absence from the United States

for the period in question was for the prescribed employment and purpose.

The present application was denied because the applicant failed to establish that his absence from the United States was solely for the purpose of performing religious duties. The applicant's duties have been described as supervising construction. Such activities have not been shown to be solely religious duties. The district director's determination has not been overcome on appeal. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.