U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

FILE: [redacted] Office: San Francisco Date: JAN 02 2003

IN RE: Applicant: [redacted]

APPLICATION: Application to Preserve Residence for Naturalization Purposes under Section 317 of the Immigration and Nationality Act, 8 U.S.C. § 1428

IN BEHALF OF APPLICANT: Self-represented

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 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, San Francisco, California, 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 performing religious duties abroad.

The district director determined that the applicant was not eligible for preservation of residence for naturalization purposes because he failed to show that his extended absences from the United States were with a bona fide religious organization who sent him abroad to perform religious duties.

On appeal, the applicant's discusses his calling to study religion at the Seminary in Tijuana. He requests that the decision be reconsidered.

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
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> (1) has been lawfully admitted to the United States for permanent residence,
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> (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
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> (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,
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> 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 December 1, 1990. He departed the United States on August 4, 1990, He enrolled in a Seminary in Tijuana and remained until July 16, 1991. He continued to be present in Mexico for approximately 11 out of 12 months for the following years, through August 1998. He was ordained as a priest on May 9, 1999.

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 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.
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> (2) The applicant must have been absent from the United States temporarily to perform the religious duties described above.
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> (3) The applicant must prove to the satisfaction of the Attorney General that the absence from the United States was solely for the purpose of performing such duties and that the absence from the United States for the period in question was for the prescribed employment and purpose.

The record clearly reflects that the applicant initially departed from the United States in August 1990 to be student. He remained a full-time student until at least June 1998. The applicant has failed to establish that his absence from the United States was solely for the purpose of performing religious duties. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.