

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



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

*EI*

[REDACTED]

FILE:

[REDACTED]

Office: ATLANTA, GA (CHARLOTTE, NC)

Date: **JAN 31 2005**

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application to Preserve Residence for Naturalization Purposes under section 316(b) of the Immigration and Nationality Act, 8 U.S.C. § 1427.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office 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.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant seeks to preserve his residence for naturalization purposes pursuant to section 316(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1427(b), as a lawful permanent resident who is absent from the United States (U.S.) due to his U.S. citizen wife's overseas employment with the U.S. government.

The district director determined that the applicant was not eligible for benefits under section 316(b) of the Act because his spouse, rather than he, was employed overseas by the U.S. government. The application was denied accordingly.

On appeal, the applicant asserts that the district director's decision was erroneous, and that based on information contained in a U.S. Department of Justice publication entitled, *A Guide to Naturalization*, the spouse of a U.S. citizen employed overseas by the U.S. government, is not required to meet U.S. residence or physical presence requirements in order to become a naturalized citizen.

Section 319 of the Act, 8 U.S.C. § 1430, states, in pertinent part that:

(b) Any person,

(1) whose spouse is

(A) a citizen of the United States,

(B) in the employment of the Government of the United States . . . and

(C) regularly stationed abroad in such employment, and

(2) who is in the United States at the time of naturalization, and

(3) who declares before the Attorney General (now Secretary, Department of Homeland Security, ("Secretary")) in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all the requirements of the naturalization laws, except that **no prior residence or specified period of physical presence within the United States or within a State or a district of the Service in the United States or proof thereof shall be required.** (Emphasis added).

The record reflects that the applicant's spouse is regularly employed overseas by the U.S. Department of State as a Visa Assistant. The applicant is therefore eligible for naturalization pursuant to section 319(b) of the Act, for which preservation of the applicant's residence for naturalization purposes is unnecessary. The applicant's section 316(b) based, Form N-470, Application to Preserve Residence for Naturalization Purposes is therefore moot, and the appeal will be sustained accordingly.

**ORDER:** The appeal is sustained.