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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK, NY Date: JUL 08 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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant seeks to preserve his residence for naturalization purposes under section 316(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1427(b), as a lawful permanent resident who is employed by a public international organization of which the United States is a member by treaty or statute.

The district director determined that the applicant was not eligible for benefits under section 316(b) of the Act because he had filed his Application to Preserve Residence for Naturalization Purposes (N-470 application) after he was outside of the United States for a continuous period of more than one year. The application was denied accordingly.

On appeal, the applicant asserts that his N-470 application was received by U.S. Citizenship and Immigration Services (CIS) in a timely matter, but that it was rejected based on his submission of an insufficient filing fee. The applicant asserts that when he submitted a filing fee of \$95.00 rather than \$150.00, he reasonably relied on fee information provided on the CIS government internet website. The applicant asserts that because he sent his original application and incorrect filing fee in a timely manner, he meets the timely filing requirements set forth in section 316(b) of the Act.

Section 316(b) of the Act provides, in pertinent part that:

[A]bsence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship (whether preceding or subsequent to the filing of the application for naturalization) shall break the continuity of such residence except that in the case of a person who has been physically present and residing in the United States after being lawfully admitted for permanent residence for an uninterrupted period of at least one year and who thereafter, is . . . employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence, no period of absence from the United States shall break the continuity of residence if-

(1) prior to the beginning of such period of employment (whether such period begins before or after his departure from the United States), but prior to the expiration of one year of continuous absence from the United States, the person has established to the satisfaction of the Attorney General [now Secretary, Homeland Security, "Secretary"] that his absence from the United States for such period is to be . . . employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence; and

(2) such person proves to the satisfaction of the Attorney General [Secretary] that his absence from the United States for such period has been for such purpose.

(Emphasis added). 8 C.F.R. § 316.5(d)(1)(i) states, in pertinent part, that:

[A]n application for the residence benefits under section 316(b) of the Act to cover an absence from the United States for a continuous period of one year or more shall be submitted to the Service on Form N-470 **with the required fee**, in accordance with the form's instructions. **The application may be filed either before or after the applicant's employment commences, but must be filed before the applicant has been absent from the United States for a continuous period of one year.**

(Emphasis added). The AAO finds that even if the applicant's N-470 application was received by CIS in a timely manner, this alone does not constitute a filing of the application. Rather, the application must have been received by CIS with the proper filing fee in order to be considered filed for section 316(b) purposes.

The applicant asserts that his N-470 application was improperly rejected because the CIS government internet website that he relied on contained erroneous filing fee amount information at the time that his application was filed. In support of his assertion, the applicant submits a copy of general N-470 application instructions which state that the filing fee amount is \$95.00. The applicant additionally submits a copy of his initial filing fee check in the amount of \$95.00. The check is dated April 30, 2004.

The AAO finds the applicant has failed to establish that the CIS government internet website contained erroneous information which would justify his failure to submit a timely application. The AAO notes that the N-470 application instructions submitted by the applicant do not contain any information relating to the date that the instructions were obtained. Nor do the instructions indicate the source from which they were obtained. Moreover, the instructions submitted have a revision and validity date of May 13, 2003 and September 30, 2003, respectively, and the AAO finds that the Form and Fee instructions contained on the present CIS government internet site clearly state on the first page that fees for certain forms were changed effective April 30, 2004, and that an application that is filed or postmarked on April 30, 2004, or later must be accompanied by the new fee. The CIS internet site then lists the fees for all its forms, including the Form N-470 application, which is listed as requiring a \$150.00 filing fee.

The record reflects that the applicant was absent from the U.S. for more than one year and that he did not properly file an N-470 application to preserve residence for naturalization purposes within the time period specified by section 316(b) of the Act. Accordingly, the applicant does not qualify for benefits under section 316(b) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.