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

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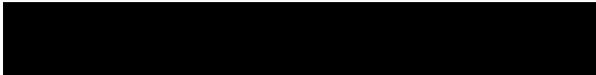
Office: DETROIT, MI

Date:

JUL 15 2005

IN RE:

Applicant:



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:



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, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action consistent with this decision.

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 an American firm or corporation (General Motors Corporation) engaged in whole or in part in the development of foreign trade and commerce of the United States or a subsidiary thereof.

The district director determined that the applicant was not eligible for benefits under section 316(b) of the Act because he was employed by General Motors Corporation (GM) before he became a U.S. lawful permanent resident. The application was denied accordingly.

On appeal, counsel asserts that section 316(b) of the Act does not require an alien to become a lawful permanent resident prior to employment by an American firm or corporation.

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 or under contract with the Government of the United States or an American institution of research recognized as such by the Attorney General [now Secretary, U.S. Department of Homeland Security, "Secretary"], or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or corporation, or 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 [Secretary] that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the

protection of the property rights in such countries of such firm or corporation, or 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). The AAO finds that the plain statutory language contained in section 316(b) of the Act does not require the applicant to establish that he became a lawful permanent resident prior to the commencement of his U.S. based employment with an American firm or corporation. Rather, the AAO finds that the statutory language specifying that an alien may not be employed prior to lawful admission for permanent residence refers exclusively to the section 316(b) of the Act provision discussing an alien's employment with a public international organization.

The AAO notes further that *Matter of Warrach*, 17 I&N Dec. 285, 286 (BIA 1979) similarly interprets section 316(b) of the Act requirements, stating in relevant part that an alien who began his employment with a U.S. company in November 1973, and became a lawful permanent resident a year later must demonstrate that he was physically present and residing in the United States after being lawfully admitted for permanent residence, for at least one year prior to his employment *abroad*.¹

The record reflects that the applicant became a U.S. lawful permanent resident on August 1, 2001. The record additionally contains a June 11, 2004, letter from the [REDACTED] Resources Manager, stating that the applicant has been employed by [REDACTED] since August 1995, and that as of July 1, 2004, the applicant will be located in Shanghai, China for three years in order to develop and monitor [REDACTED] joint partnership, supply operations with Shanghai General Motors.

¹ Footnote 1 of *Matter of Warrach, supra*, defines pertinent section 316(b) of the Act requirements in the following manner:

Absence 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 . . . 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 an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or corporation . . . 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), the person has established to the satisfaction of the Attorney General that his absence from the United States for such period is . . . to be engaged in the development of such foreign trade and commerce . . .

The AAO notes that the record contains no evidence to establish that the applicant resided and was physically present in the U.S. for a continuous period of one year or more, after becoming a U.S. lawful permanent resident. The AAO notes further that the record contains no evidence or information to establish that [REDACTED] qualifies as an American firm or corporation, or that Shanghai [REDACTED] qualifies as a subsidiary of an [REDACTED] firm or corporation, as set forth in section 316(b) of the Act.²

In view of the foregoing, the application is remanded to the district director for reconsideration of the issues stated above and entry of a new decision, which, if adverse to the applicant, will be certified to the AAO for review, accompanied by a properly prepared record of proceedings.

ORDER: The matter is remanded to the district director for further action consistent with this decision.

² For purposes of section 316(b) of the Act, the nationality of a firm or corporation has traditionally been determined by tracing the percentage of individual ownership interests in a firm or corporation, and by tracing the nationality of the persons having principal ownership interests (more than 50%) in the firm or corporation. The Immigration and Naturalization Service Regional Commissioner stated in *Matter of Warrach, supra* at 286-87, that:

[W]hen it is shown that 51 percent or more of the stock of the employer corporation is owned by a foreign firm, such firm is a "foreign corporation" within the meaning of section 316(b). The fact that a firm is incorporated under the laws of a state of the United States does not necessarily determine that it is an American firm or corporation. The nationality of such firm would be determined by the nationality of those persons who own more than 51 percent of the stock of that firm.

The AAO notes that the difficulty of tracing nationalities and ownership interests in modern public corporations make it reasonable to presume that a publicly held corporation may meet the definition of an "American corporation" if the applicant meets the burden of providing the best evidence available to demonstrate that the corporation is incorporated in the United States and trades its stock exclusively on U.S. stock exchange markets. *See generally*, Volume 9 of the Foreign Affairs Manual (9 FAM) 41.51 N3.2,

In addition, the AAO notes that U.S. Citizenship and Immigration Services (CIS) Interpretations 316.1(4)(iii) clarified section 316(b) requirements for qualifying as a "subsidiary of an American firm or corporation" by stating:

(iii) [W]hen no one American firm or corporation controls the employing foreign corporation through direct ownership of more than 50% of its stock, the foreign corporation cannot be regarded as a "subsidiary" of an American firm or corporation for purposes of current section 316(b), even though all of the stock of the foreign corporation is actually owned by American firms or corporations.