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U.S. Citizenship
and Immigration
Services

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EL

[Redacted]

FILE:

[Redacted]

Office: DALLAS, TX

Date: **AUG 29 2006**

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(b)

ON BEHALF OF APPLICANT:

[Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Dallas, Texas, 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 engaged in the development of foreign trade and commerce of the United States on behalf of a U.S. firm or corporation or its subsidiary.

The district director determined that the applicant was not eligible for benefits under section 316(b) of the Act because his employment with his firm began prior to the date on which he was approved for lawful permanent resident status. The application was denied accordingly.

On appeal, the applicant, through his counsel, asserts that the director misinterpreted the requirements of section 316(b) of the Act. Counsel contends that the language of the statute does not require the applicant's qualifying employment to have begun subsequent to his adjustment of status to lawful permanent resident.

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, Homeland Security], 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 percentum 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 [now Secretary, Homeland Security, "Secretary"] that his absence from the United States for such period is to be on behalf of such Government . . . 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.

Further discussion of section 316(b) requirements is found at 8 C.F.R. § 316.5(d)(1)(i):

[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.

The record establishes that the applicant's employment with his company predates his approval as a lawful permanent resident on November 16, 2000. **On appeal, counsel asserts that the beneficiary's prior employment does not preclude him from benefiting from the Form N-470.** She contends the comma placement in the language of section 316(b) of the Act and the "or" separating the classes of lawful permanent residents eligible to preserve residency establishes that only individuals employed by public international organizations must adjust status prior to obtaining their employment. Counsel's interpretation of the statutory language of section 316(b) of the Act is not persuasive.

The language of section 316(b) of the Act clearly states that absence from the United States or one year or more will break the continuity of residence for the purposes of naturalization except where the absence involves individuals who have 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**" [emphasis added] are engaged in one of several types of employment. The plain meaning of the statutory language is to require an individual filing the Form N-470 to establish that he or she obtained lawful permanent resident status before beginning the qualifying employment.

On appeal, counsel also cites to *Matter of Wu*, 14 I&N Dec. 290 (Reg. Comm. 1973), referencing the Regional Commissioner's conclusion that "[i]t is inconsistent with the objectives of section 316(b) to hold an alien who has been found eligible for the benefits thereof has lost his status as a permanent resident solely because of his extended absences abroad in the employment of an American firm." However, the issues and considerations raised by *Matter of Wu* are distinctly different from those in the instant case, where the applicant has been found ineligible for the benefits of 316(b) of the Act. Accordingly, the AAO does not find *Matter of Wu* to be relevant to the issues before it.

As previously discussed, the applicant did not become a lawful permanent resident prior to obtaining his qualifying employment. Accordingly, he is not eligible for an exemption from the naturalization residency requirements of section 316(b) of the Act. The appeal will be dismissed.

ORDER : The appeal is dismissed.