



U.S. Citizenship
and Immigration
Services

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EL

[Redacted]

FILE:

[Redacted]

Office: SEATTLE, WA

Date: APR 26 2007

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 to preserve residence for naturalization purposes was denied by the District Director, Seattle, Washington. The matter 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 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 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.

The district director determined that the applicant was not eligible for benefits under section 316(b) of the Act because the record failed to establish that he been physically present in the United States for a period of more than one year after being lawfully admitted for permanent residence in the United States. The district director also found that the applicant had failed to file the Form N-470, Application to Preserve Residence for Naturalization Purposes, prior to beginning his overseas assignment. The application was denied accordingly.

On appeal, the applicant, through counsel, states that the district director, in part, denied his application because he failed to show that he resided in the United States for one year without interruption. He contends that he did maintain uninterrupted residence in the United States for one year prior to his overseas assignment. The applicant notes that, by regulation, continuity of residence is not presumed to be disrupted if there is no absence of more than six months and that he has never been outside the United States for more than 180 days. He points to his home ownership, tax payments, bank accounts and the temporary character of his overseas assignment as proof of his continuing residence in the United States. The applicant notes that the district director did not find him to have failed to meet any physical presence requirement.

The applicant also contends that he was not required to file the Form N-470 prior to beginning his overseas assignment, that the application was timely filed in that it was submitted prior to his being absent from the United States for one continuous year.

The AAO turns first to the issue of whether the Form N-470 was timely filed.

The regulation at 8 C.F.R. § 316.5(d)(1)(i) states:

- (i) An 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.

On appeal, the applicant asserts that the N-470 was timely filed on July 20, 2006 as he has not yet been absent from the United States for one continuous year. The AAO finds the record on appeal to contain copied pages from the applicant's passport showing a U.S. admissions stamp for September 24, 2005. Accordingly, the applicant has proved that, at the time he filed the Form N-470, he had been outside the United States for less than one continuous year. The application is found to be timely filed.

Section 316(a)(1) of the Act, 8 U.S.C. § 1427(a)(1) provides in pertinent part that:

No person . . . shall be naturalized, unless such applicant, (1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his application has been physically present therein for periods totaling at least half of that time

Section 316(b) of the Act, 8 U.S.C. § 1427(b) addresses the effect of absences during the required five-year period of continuous residence, and 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 . . . 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.

It is noted that the applicant is employed by Microsoft. The company's status as an American firm or corporation is not addressed in the district director's decision, and is not at issue in the present appeal.

The applicant was admitted to the United States as a lawful permanent resident on August 21, 2000. An attachment to the applicant's Form N-470, (Form N-470) reflects that following his admission for lawful permanent residence, the applicant was absent from the U.S. for business and personal reasons on the following dates:

December 23 – December 30, 2000
April 13 – April 22, 2001
July 27 – August 14, 2001
September 6 – September 18, 2001
December 14 – December 21, 2001
March 12 – March 19, 2002
June 22 – July 10, 2002
July 24 – August 5, 2002
December 20 – December 30, 2002
January 22 – January 28, 2003
March 22 – March 29, 2003
June 23 – July 19, 2003
January 12 – January 17, 2004
June 21 – July 18, 2004
November 7 – November 10, 2004
December 23, 2004 – January 1, 2005
February 15 – February 17, 2005

April 10 – April 17, 2005
May 22 – May 28, 2005
June 22 – July 18, 2005
July 30 – September 23, 2005
October 1, 2005 – March 10, 2006
March 16 – July 17, 2006

The Form N-470 reflects that the applicant will work and reside in India for two to three years beginning in July 2005.

The Board of Immigration Appeals held in *Matter of Graves*, 19 I&N Dec. 337, 339 (Comm. 1985) that, “[i]t is not possible to construe the uninterrupted physical presence requirement of section 316(b) to allow departures.” In *Matter of Copeland*, 19 I&N Dec. 788, 789 (BIA 1988), the Board of Immigration Appeals reaffirmed its holding in *Matter of Graves* and stated further that:

[A]ny departure from the United States for any reason or period of time bars a determination that an alien has been continuously physically present in the United States or present in the United States for an uninterrupted period during the period including the departure. An applicant’s failure to establish he or she has been present in the United States for 1 year after lawful admission for permanent residence bars eligibility for preservation under section 316(b).

Accordingly, the applicant is not eligible to benefit from the provisions of section 316(b) of the Act. Based on his own statements, the applicant has not been physically present in the United States for one continuous year since he became a lawful permanent resident. Although the AAO notes the applicant’s assertion on appeal that the district director did not find him to have failed to meet any physical presence requirement, it finds that the text of the district director’s decision highlights the language of section 316(b) of the Act that requires those filing the Form N-470 to 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.” Therefore, the applicant’s claim that the director did not base his decision, in part, on the physical presence requirement of section 316(b) of the Act is not persuasive.

The burden of proof in these proceedings rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant in the present matter has failed to establish that he was physically present in the United States for an uninterrupted period of at least one year after being lawfully admitted for permanent residence. The applicant is thus ineligible for preservation of his residence for naturalization purposes under section 316(b) of the Act. The appeal will therefore be dismissed and the application denied.

ORDER: The appeal is dismissed. The application is denied.