



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy

*E1*

[REDACTED]

FILE:

[REDACTED]

Office: SAN ANTONIO, TX

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.

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*

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant seeks to preserve her 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 whose absence from the United States is required for the protection of the property rights abroad of an American firm or corporation engaged in the development of foreign trade and commerce of the United States.

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 the company employing her was an American firm or corporation engaged in the development of U.S. foreign trade and commerce. The district director concluded that the applicant's employer was based in China, maintaining only a "paper business" in the United States. Accordingly, he denied the Form N-470, Application to Preserve Residence for Naturalization Purposes.

On appeal, counsel asserts that the applicant's employer is bona fide American-based corporation and submits additional documentation to establish its U.S. operations.

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 an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States . . . 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 . . . necessary to the protection of the property rights in such countries in such firm or corporation, . . . 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.

In his decision, the district director indicated that the telephone number for PTS International, Inc. (PTS), the applicant's employer, was no longer a working number. He further noted that the accountant who conducted the March 31, 2004 *Independent Auditor's Report* on PTS that is included in the record had informed Citizenship and Immigration Services (CIS) that although the company had conducted one research study in the United States, the firm was actually based in China. The accountant described PTS International as maintaining a "paper business" in the United States.

The AAO notes that the district director did not provide the applicant an opportunity to respond to the derogatory information he identified prior to his issuance of the decision, as required by the regulation at 8 C.F.R. § 103.2(b)(16)(i). Nevertheless, the AAO finds the remedy to the director's oversight to be provided by the appeal process itself. The applicant has, in fact, responded to the district director's findings on appeal, and, therefore, it would serve no useful purpose to remand the case to the district director simply to provide the applicant with an opportunity to submit this same information.

For purposes of section 316(b) of the Act, the nationality of a firm or corporation has traditionally been determined through 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 legacy Immigration and Naturalization Service Regional Commissioner stated in *Matter of Warrach*, 17 I&N Dec. 285, 286-287 (Reg. Comm. 1979) 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.

On appeal, counsel asserts that the telephone number for PTS International, Inc. is in service, but has been changed. She also contends that the company does have operations in the United States and has been approved by the Food and Drug Administration (FDA) to begin clinical trials of a new cancer drug as of June 2005. In support of her statement, she submits a letter from the Food and Drug Administration to PPD Development (PPD), the company that counsel indicates will conduct the clinical trials under contract to PTS and a letter from PPD's Director of Product Development to [REDACTED] identified by the record as PTS' General Counsel. Counsel also provides a letter from [REDACTED], the accountant who conducted the auditing report that is contained in the record. The letter from the FDA establishes that PPD is engaged in clinical trials for para-toluensulfonamide injections in the United States. The letters from PPD and [REDACTED] establish a contractual relationship between PPD and PTS. However, this additional evidence, does not overcome the negative information reported in the district director's decision concerning the nature of PTS' business in the United States.

None of the submitted letters, including that provided by [REDACTED] establish PTS as an American company engaged in the development of U.S. foreign trade and commerce. [REDACTED]'s letter, which states that PTS was incorporated in Texas on April 10, 2000 and has filed financial statements for the previous four years, does not contradict or withdraw his earlier description of PTS as a paper U.S. business, based in China. As discussed above, the petitioner's incorporation in Texas and the filing of financial statements are insufficient proof that PTS is an American firm engaged in the development of U.S. trade and commerce. The financial statements and tax returns previously submitted by counsel also fail to establish the nature of PTS operations. Accordingly, the applicant has not overcome the basis for the district director's denial.

Beyond the decision of the director, the AAO finds PTS' own letterhead to raise questions regarding its bona fides as an American corporation. The PTS letterhead included in the record lists its corporate address as [REDACTED]. The AAO notes that this address and suite number are identical to the address and suite number of the Law Office of [REDACTED], as indicated on the business card for [REDACTED] included in the

record. The AAO finds nothing in the record that addresses the co-location of PTS and [REDACTED]'s law office. Moreover, the AAO notes that the record is silent as to the ownership of PTS, which pursuant to the holding in *Matter of Warrach* must be at least 51 percent owned by a U.S. firm or interests to qualify as an American company.

In the present case, the record has failed to demonstrate that the applicant's employer is an American firm or corporation engaged in the development of U.S. foreign trade and commerce. 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.