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

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: WASHINGTON, DC

Date:

OCT 31 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form N-470, Application to Preserve Residence for Naturalization Purposes (N-470 Application) was denied by the District Director, Washington, D.C. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the N-470 application will be denied.

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 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 consideration under section 316(b) of the Act because he failed to demonstrate that he was in the United States for a continuous period of at least one year after being lawfully admitted for permanent residence in the United States. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that the district director used erroneous application filing, and admission for lawful permanent residence, dates to calculate the applicant's period of continuous stay in the United States. The applicant asserts that his correct application filing date is February 6, 2003 rather than February 6, 2005, as stated by the district director. The applicant asserts further that his lawful permanent resident card demonstrates that he was admitted into the U.S. as a lawful permanent resident on January 21, 2000, and not on January 21, 2001, as stated in the district director's decision. The applicant indicates, through counsel, that the evidence establishes he was present in the U.S. without interruption between January 21, 2000 and December 14, 2001, and he asserts that he is thus eligible for consideration for benefits under section 316(b) of the Act.

In order to be naturalized as a United States citizen, the Act requires in part, that a person reside continuously in the United States as a lawful permanent resident for at least five years prior to filing an application for naturalization, and that the person be physically present in the U.S. for at least one half of the required residency period. *See generally*, section 316 of the Act, 8 U.S.C. § 1427. Section 316(b) of the Act 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.

“[I]t is not possible to construe the uninterrupted physical presence requirement of section 316(b) to allow departures.” *Matter of Graves*, 19 I&N Dec. 337, 339 (Comm. 1985.)

[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).

Matter of Copeland, 19 I&N Dec. 788, 789 (BIA 1988.) In the present matter, the applicant asserts through counsel, that he was physically present in the U.S. for an uninterrupted period of at least one year after being lawfully admitted into the U.S. for permanent residence on January 21, 2000. The applicant submits a copy of his lawful permanent resident alien card (LPR card) as evidence of his lawful permanent resident admission date.

The AAO notes that the applicant's LPR card indicates he has been a resident since January 21, 2000. The AAO notes further, however, that the resident admission date contained on the applicant's LPR card appears to be erroneous. The AAO has reviewed the applicant's alien file (Afile) and record of proceedings. The original Immigrant Visa and Alien Registration documentation contained in the applicant's record clearly reflects that the applicant was admitted into the United States as an E31 lawful permanent resident on January 21, 2001. The record indicates further that a U.S. Citizenship and Immigration Services (CIS) update was created on June 21, 2006 in order to correct the erroneous date of admission on the applicant's LPR card from January 21, 2000 to January 21, 2001. Based on the above evidence, the AAO finds that the district director used the correct date of lawful permanent residence when adjudicating the applicant's N-470 application. A review of the date of filing of the applicant's N-470 application reflects, however, that the applicant filed his N-470 application on February 6, 2003, rather than on February 6, 2005, as stated in the district director's decision. Accordingly, the AAO will use the February 6, 2003, filing date to determine the length of the applicant's continuous presence in the United States, prior to the filing of his application to preserve residence for naturalization purposes.

The applicant submits passport evidence, and states on his N-470 application, that he was outside of the U.S. from December 14, 2001 to January 13, 2002, and December 21, 2002 to January 19, 2003. A review of the above dates reflects that the applicant was not continuously present in the United States for one year subsequent to his obtaining lawful permanent resident status in the U.S. on January 21, 2001, and prior to filing his N-470 application on February 6, 2003. Accordingly, the applicant is ineligible for preservation of his residence for naturalization purposes under section 316(b) of the Act. The AAO notes that it is therefore not necessary to address whether the applicant's employer meets the definition of an American firm or subsidiary thereof.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed, and the application will be denied.

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