

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

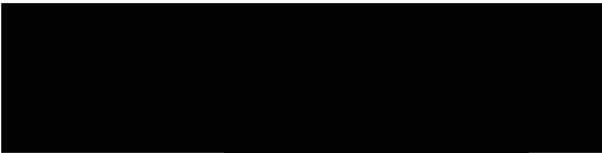
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

E1



FILE: [Redacted] Office: MIAMI, FL Date: DEC 01 2008

IN RE: Applicant: [Redacted]

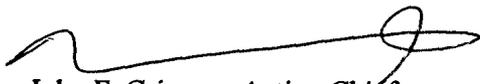
APPLICATION: Application to Preserve Residence for Naturalization Purposes under Section 316(b) of the Immigration and Nationality Act, 8 U.S.C. § 1427(b)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting 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, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision will be withdrawn and the application will be remanded to the director for further consideration and new a decision, which shall be certified to the AAO for review.

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 did not establish eligibility under section 316(b) of the Act because the record indicates that he will be employed in Australia by a firm which is not more than 50 percent owned by the applicant's employer in the United States. The director also determined that, since the applicant will be remunerated directly by the Australian firm, he will be "employed overseas by an Australian owned firm," and, therefore, is not eligible for the benefit sought.

On appeal, counsel asserts that the applicant will remain an employee of the United States firm for the duration of his stay in Australia and, thus, is eligible for the benefit sought. Counsel further argues that the applicant's receipt of remuneration directly from the Australian firm does not preclude him from establishing that he is still employed by an American firm. In support, counsel cites pertinent precedent decisions and refers to a Letter Agreement describing the applicant's employment relationships with both the United States and Australian firms. The Letter Agreement indicates that the applicant will remain an employee of the United States firm, and will remain eligible for the United States benefits package, but will be remunerated directly by the Australian firm and will be subject to Australian taxes.

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 United States 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 (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, 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), 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 engaged in the development of such foreign trade and commerce or whose residence 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.

The primary issue in this matter is whether the applicant has established that he is employed by an American firm or corporation or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or corporation.

Upon review, the AAO agrees with counsel that the record establishes that the applicant will remain an employee of KPMG LLP during his assignment in Australia. Although the applicant will be remunerated directly by the Australian firm, the Letter Agreement credibly describes a focused and limited assignment during which the applicant will remain an employee of the United States firm. As correctly noted by counsel, the applicant's receipt of remuneration from the Australian firm does not preclude him from preserving residence in the United States for naturalization purposes pursuant to section 316(b) of the Act. As explained in the Letter Agreement, the applicant will also receive compensation, in the form of a benefits package and a guarantee of future employment, from the United States employer. Accordingly, the decision of the district director shall be withdrawn.

However, upon review, the applicant has not submitted sufficient evidence to establish eligibility for the benefit sought. While not addressed by the district director, the applicant has failed to establish that his employer in the United States and Australia, KPMG LLP, is an "American firm or corporation."

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.

See also *Matter of Chawathe*, [REDACTED] (AAO January 11, 2006) (available at [http://www.uscis.gov/files/article/\[REDACTED\].pdf](http://www.uscis.gov/files/article/[REDACTED].pdf)).

In this matter, the record is devoid of evidence establishing the ownership of KPMG LLP. The fact that KPMG LLP is a limited liability partnership formed under the laws of the State of Delaware does not establish that it is an "American firm or corporation." Instead, the nationality of 51% of the partners determines whether KPMG LLP is, or is not, an "American firm or corporation." As the record is devoid of this evidence, the application cannot be approved.

Accordingly, the director is directed to review the record and request additional evidence establishing that at least 51% of the partners of KPMG LLP are citizens of the United States as of the day the Form N-470 was filed, i.e., November 28, 2005. This evidence shall include: (1) a copy of all partnership agreements and other pertinent documents establishing the ownership structure of the firm; and (2) a list of all partners as of November 28, 2005 along with evidence of their citizenship.

For this reason, the appeal may not be sustained, and the matter must be remanded to the director for further action.

It is noted that the burden of proof in these proceedings rests solely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to the director for further action consistent with the above and the entry of a new decision, which shall be certified to the AAO for review.