



U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: WASHINGTON, DC Date: **MAY 16 2008**

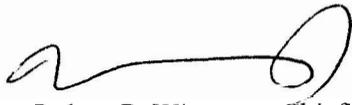
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

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 Field Office Director, Washington, D.C. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be withdrawn and the application will be remanded to the director for further consideration and new a decision, which shall be certified to the AAO for review.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 (MicroStrategy, Inc.) engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof.

The director determined that the applicant was not eligible for benefits under section 316(b) of the Act because he was employed by MicroStrategy, Inc. before he became a United States lawful permanent resident. The applicant began working for MicroStrategy, Inc. in 1998 but became a permanent resident of the United States on July 20, 2003. The application was denied accordingly.

On appeal, counsel to the applicant asserts that the section 316(b) bar referred to by the field office director applies only to persons who have been employed by a public international organization prior to obtaining lawful permanent resident status. Counsel asserts that the section 316(b) bar does not apply to persons who were employed by an American firm or corporation prior to obtaining lawful permanent resident status and, thus, the applicant is not required to establish that his employment with MicroStrategy, Inc. began after he became a lawful permanent resident.

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.

Section 316(b) of the Act also 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, 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, Department of 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 abroad is necessary to the protection of the property rights in such countries of such firm or corporation, or to be 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; 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.

(Emphasis added.)

The AAO notes that the statutory language contained in section 316(b) of the Act does not require a person to establish that he or she became a United States lawful permanent resident subsequent to the commencement of employment with an American firm or corporation. Rather, the statutory language specifying that an alien may not be employed by an organization prior to lawful admission for permanent residence refers only to the provisions pertaining to employment by public international organizations. The legacy Immigration and Naturalization Service (INS) further clarified section 316(b) of the Act provisions in *Matter of Warrach*, 17 I&N Dec. 285, 286 (Reg. Comm. 1979), by stating that an alien who began employment with a United States company prior to becoming a lawful permanent resident need only establish that he or she was physically present and residing in the United States after being lawfully admitted for permanent residence for at least one year prior to his employment abroad. Accordingly, the field office director's decision shall be withdrawn.

However, upon review, the applicant has failed to establish that he has been continuously physically present in the United States for the requisite one-year period after being lawfully admitted for permanent residence, and the application should have been denied for that reason.

The legacy INS and Citizenship and Immigration Services (CIS) have long interpreted the term "uninterrupted physical presence" to bar any departure from the United States. "[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). In *Matter of Copeland*, the Commissioner of legacy INS stated:

[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).

19 I&N Dec. 788, 789 (Comm. 1988).

In this matter, the record indicates that the applicant became a permanent resident in the United States on July 20, 2003. The instant application was filed on August 14, 2007. In an attachment to the application, the applicant listed sixteen absences from the United States after becoming a lawful permanent resident. The first absence began on December 29, 2003, the last absence ended on May 28, 2007, and none of the interim absences is more than one year apart. Accordingly, the applicant is not eligible for the benefit sought because he has not been continuously physically present in the United States for at least one year since becoming a permanent resident on July 20, 2003.

Therefore, in view of the applicant's ineligibility on a separate ground, the field office director is directed to render a new decision, which shall be certified to the AAO for review.

**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.