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U.S. Citizenship and Immigration Services

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[redacted]

APR 23 2004

FILE: [redacted] Office: [redacted] Date:

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:

SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California, 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).

The district director determined that the applicant was not eligible for benefits under section 316(b) of the Act because she filed her Application to Preserve Residence for Naturalization Purposes (Form N-470) after she had been outside of the United States for a continuous period of more than one year. The application was denied accordingly.

On appeal, the applicant asserts that she worked as a contract employee for the U.S. Embassy in Belgrade, and that she mailed her Form N-470 application through the Embassy mailroom on June 13, 2001, four days prior to having resided outside of the U.S. for a period of one year. The applicant asserts that her Form N-470 application was rejected due to an insufficient filing fee, but that she reasonably relied on information provided on the Department of Justice internet website when paying a filing fee of $80.00 rather than $95.00. The applicant asserts that by sending her original application on June 13, 2003, she meets the timely filing requirements set forth in section 316(b) of the Act.

Section 316 of the Act provides, in pertinent part that:

. . . .

> (b) [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 or under contract with the Government 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 to be on behalf of such Government . . . 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.

8 C.F.R. § 316.5(d) states, in pertinent part:

> (1) Preservation of residence under Section 316(b) of the Act.

> (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.

(Emphasis added). The applicant asserts that she submitted her Form N-470 application to the U.S. Embassy for overnight mailing on June 13, 2003. A December 1, 2003, confirmation letter by an Embassy mail clerk states that a letter was sent on June 13, 2003, to the California Service Center. The mail clerk does not confirm what type of letter was sent or that it was the applicant's Form N-470 application. Moreover, the AAO finds that, even if the Form N-470 application was mailed to the California Service Center in a timely manner, this alone did not constitute a filing of the application with the California Service Center. Rather, the application must have been received by the Immigration Service with the proper filing fee in order to be considered filed for section 316(b) purposes.

The applicant asserts that her Form N-470 application was improperly rejected because she relied on erroneous filing fee information contained in the Department of Justice internet website when filing her N-470 application. The AAO notes that the Form N-470 instructions submitted as evidence by the applicant do not contain the date when they were obtained. Nor do the instructions indicate the source from which they were obtained. Moreover, the Form N-470 instructions submitted by the applicant reflect a revision date of September 8, 2000. The AAO notes that the December 4, 2001, revised N-470 instructions clearly state that the Form N-470 application filing fee is $95.00. The applicant therefore failed to establish that the Immigration Service furnished erroneous information, which would justify her failure to submit a timely application.

The record reflects that the applicant was absent from the U.S. for more than one year and that she did not file an N-470 application to preserve residence for naturalization purposes within the time period specified by section 316(b) of the Act. The applicant thus does not qualify for benefits under section 316(b) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.