U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship
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[redacted]

FILE: [redacted] Office: BOSTON, MA Date: MAY 13 2004

IN RE: Applica[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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Boston, Massachusetts, 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 spouse was absent from the United States (U.S.) for the purpose of employment with a U.S. government contractor.

The district director determined that the applicant was not eligible for benefits under section 316(b) of the Act because she herself was not employed by an employer described in section 316(b) of the Act. The application was denied accordingly.

On appeal, counsel asserts that the applicant's husband works for Pathfinder International, a company that meets the qualifications set forth in section 316(b) of the Act, and that the applicant has resided with her husband during his overseas work assignment. Counsel asserts that the applicant's husband did not satisfy his one-year period of continuous physical presence requirements in the U.S. due to travel assignments that preceded his actual employment overseas. The applicant's husband is therefore ineligible for section 316(b) related benefits, and consequently, the applicant is unable to derive section 316(b) benefits through her husband. Counsel asserts that the applicant should not be penalized for accompanying her husband abroad. Counsel asserts further that although the applicant is also not eligible for benefits under section 319(b) of the Act, 8 U.S.C. §1430(b), the reduced physical presence requirements contained within that section should be extended to the applicant for section 316(b) purposes. Counsel concludes that for family unity reasons and out of fairness to the applicant, the applicant should be granted benefits under section 316(b) of the Act.

Section 316 of the Act provides, in pertinent part:

> (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-
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> > (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.

> **The spouse** and dependent unmarried sons and daughters who are members of the household **of a person who qualifies for the benefits of this subsection shall also be entitled to such benefits** during the period for which they were residing abroad as dependent members of the household of the person.

(Emphasis added). Counsel concedes that the applicant herself is not employed by a qualifying employer under section 316(b) of the Act, and that she has instead, accompanied her husband abroad on his work assignment with Pathfinders International. Counsel concedes further that the applicant's husband is not eligible for preservation of residence benefits under section 316(b) of the Act, and that the applicant therefore is not able to obtain derivative 316(b) benefits through him. The AAO finds that the plain language of the statute makes clear that the applicant herself must be employed by the qualifying organization in order to qualify, as a principal applicant, for benefits under section 316(b) of the Act. The AAO finds further that counsel's assertion that reduced physical presence requirements contained in section 319 of the Act, should be applied to the applicant's case for family and fairness reasons is a baseless assertion, unsupported by any legal authority or evidence.

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.