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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

Date: [redacted]

FILE: [redacted] Office: KANSAS CITY (ST. LOUIS) , MISSOURI

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:

[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 Interim District Director, St. Louis, Missouri, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 was absent from the United States (U.S.) for the purpose of engaging in the development of foreign trade and commerce of the United States on behalf of an American firm or corporation, or a subsidiary thereof.

The interim district director determined that the applicant was not eligible for benefits under section 316(b) of the Act because he had been outside of the United States for a continuous period of more than one year after being lawfully admitted for permanent residence in the United States, and because he filed his Form N-470, Application to Preserve Residence for Naturalization Purposes (N-470 application) after he had been outside of the United States for a continuous period of more than one year. The application was denied accordingly.

On appeal, counsel asserts that the applicant is eligible for section 316(b) preservation of residence benefits because he obtained reentry permit approval from the Immigration and Naturalization Service (INS, now Citizenship and Immigration Service, CIS) in 2000 and 2003, and thereby established that the Attorney General (now Secretary, Homeland Security, Secretary) is satisfied that the applicant's absence from the United States was necessary and for the purpose of conducting business-related activities. Counsel does not otherwise address the basis of the district director's denial of the application. Counsel subsequently requests oral argument before the AAO.

Under 8 C.F.R. § 103.3(b), counsel must explain in writing why oral argument is necessary. CIS has sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument has been stated or shown. The request will therefore be denied.

Section 316(b) of the Act 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 . . . **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 . . . 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 AAO notes that the applicant became a lawful permanent resident of the United States on December 12, 1996. The record contains no evidence to indicate that the applicant has resided in the U.S. for a continuous period of one year or more since obtaining his lawful permanent residence status. The AAO therefore finds that the applicant has failed to establish that he was physically present and residing in the U.S. after being lawfully admitted for permanent residence for an uninterrupted period of at least one year.

Moreover, the AAO finds counsel's assertion that CIS reentry permit approval establishes that the applicant qualifies for section 316(b) preservation of his residence for naturalization purposes, to be without merit. "[A] reentry permit allows a permanent resident to apply for admission to the United States upon return from abroad during the period of the permit's validity without the necessity of obtaining a returning resident visa." *See* 8 C.F.R. § 223.1(a). "[E]xcept as otherwise provided in this section, [a reentry] application may be approved if filed by a person who is in the United States at the time of application and is a lawful permanent resident or conditional permanent resident." *See* 8 C.F.R. § 223.2(b)(1). "[A] reentry permit issued to a person who, since becoming a permanent resident, or during the last five years, whichever is less, has been outside the United States for more than four years in the aggregate, shall be limited to a validity of one year". *See* 8 C.F.R. § 223.2(c)(2). "[A]n application for a reentry permit . . . shall be denied if the applicant was previously issued a reentry permit . . . which is still valid, unless it was returned to the Service or it is demonstrated that it was lost." *See* 8 C.F.R. § 223.2(c)(2).

The AAO finds that the purpose of, and requirements for, obtaining a reentry permit are unrelated to the preservation of residence requirements set forth in section 316(b) of the Act. The fact that the applicant has obtained a reentry permit into the United States is therefore not relevant to, or indicative of, the applicant's continuous presence in the U.S., as set forth in section 316(b) of the Act.

Based on the evidence contained in the record, the AAO finds that the applicant has been absent from the U.S. for more than one year since obtaining his lawful permanent residence status. The AAO notes further that the applicant additionally failed to establish that he filed his N-470 application prior to being absent from the U.S. for one year or more, as required by section 316(b) of the Act. Because the applicant has failed to establish that the meets the requirements set forth in section 316(b) of the Act, the AAO finds it unnecessary to adjudicate the issue of whether the company the applicant works for meets the definition of an "American firm or corporation", as defined in section 316(b) of the Act. The appeal will be dismissed accordingly.

ORDER: The appeal is dismissed.