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U.S. Department of Homeland Security
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Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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[Redacted]

FILE:

[Redacted]

Office:

BUFFALO, NY

Date:

DEC 02 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)

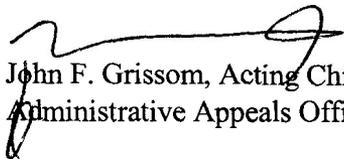
ON BEHALF OF APPLICANT:

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.

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 Field Office Director, Buffalo, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the N-470 application will be denied.

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 who is carrying on scientific research on behalf of an American institution of research.

The field office director determined that the applicant was not eligible for consideration under section 316(b) of the Act because she failed to demonstrate that she was physically present in the United States for a continuous period of at least one year after being lawfully admitted for permanent residence in the United States. The application was denied accordingly.

On appeal, the applicant asserts that two of her trips abroad occurring after being admitted for permanent residence were related to projects funded by either the United States National Science Foundation or the United States Air Force Office of Scientific Research. Accordingly, the applicant asserts that, ignoring these absences from the United States, she was physically present in the United States for a continuous period of at least one year.

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 . . . 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 or an American institution of research recognized as such by the Attorney General[.]

(Emphasis added).

“[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).

[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).

Matter of Copeland, 19 I&N Dec. 788, 789 (BIA 1988).

In the present matter, the applicant was lawfully admitted for permanent residence in the United States on November 21, 2003. According to the attachment to the Form N-470, the applicant was absent from the United States twelve separate times between the date of admission and the date of application. As correctly noted by the field office director, the longest uninterrupted period of physical presence in the United States was from August 8, 2005 until June 15, 2006, a total of 311 days.

Therefore, the record indicates that the applicant has not been continuously physically present in the United States for the requisite one-year period after being lawfully admitted for permanent residence. Accordingly, the applicant is not eligible for the benefit sought. Although the applicant claims that two of her absences were related to scientific projects both supported and funded by the United States, the reason for these absences during the one-year physical presence period is not relevant under the statute. As noted above, "any 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." *Id.* at 789.

The burden of proof is on the applicant to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed, and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.