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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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DATE: SEP 23 2011 OFFICE: TAMPA FIELD OFFICE FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application to Preserve Residence for Naturalization Purposes under Section 317 of the Immigration and Nationality Act, 8 U.S.C. § 1428.

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application to preserve residence for naturalization purposes was denied by the Field Office Director, Tampa, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The field office director's decision will be withdrawn and the application will be remanded for further action.

The applicant seeks to preserve his residence for naturalization purposes pursuant to 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 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.

The field office director determined that the applicant was not eligible for consideration under section 316(b) of the Act because he failed to demonstrate that he 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.

On appeal, counsel for the applicant asserts that the record establishes that the applicant was physically present in the United States from July 9, 2004 until September 16, 2005, a period which exceeds one year. In response to a request for additional information, the applicant submitted a list of all his trips outside of the United States between 2000 and 2010, which clearly indicates that he did not travel abroad between July 9, 2004 and September 16, 2005. In addition, the applicant submitted a complete copy of his previous and current passport.

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 (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 . . . 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 engaged in the development of such foreign

> trade and commerce or whose residence is necessary to the protection of the property rights in such countries in such firm or corporation, . . . 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 primary issue in the present matter is whether the applicant has established that he was physically present in the United States for an uninterrupted period of twelve months following admission as a permanent resident.

The record indicates that the applicant was admitted as a permanent resident in the United States on August 6, 2000. The current application to preserve residence for naturalization purposes was filed on October 19, 2010. As noted above, the applicant submitted a list of absences from the United States in response to the director's request for additional information. This attachment indicates that he did not travel abroad between July 9, 2004 and September 16, 2005. The applicant also submitted a copy of both his previous and current passport. The entry and exit stamps in his passports corroborate his claim to have been physically present in the United States from July 9, 2004 until September 16, 2005, a period which exceeds one year in length. Accordingly, the AAO agrees that the field office director erred and that the record establishes that it is more likely than not that the applicant was physically present in the United States for an uninterrupted period of one year following admission as a permanent resident. Thus, the field office director's decision shall be withdrawn.

However, the application will be remanded for further action since the applicant did not provide sufficient evidence to establish the nationality of the applicant's United States employer. While not addressed by the district director, the applicant has failed to establish that his employer in the United States is an "American firm or corporation."

The applicant seeks to preserve his residence for naturalization purposes pursuant to section 316(b) of the Act as a lawful permanent resident who 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. The applicant submitted a letter from the Head of Human Resources of [redacted] that states that the Australian affiliate and the applicant's U.S. employer belong to the same holding company, [redacted]

For purposes of section 316(b) of the Act, the nationality of a firm or corporation has traditionally been determined through tracing the percentage of individual ownership interests in a firm or corporation, and by tracing the nationality of the persons having principal ownership interests (more

than 50%) in the firm or corporation. The legacy Immigration and Naturalization Service Regional Commissioner stated in *Matter of Warrach*, 17 I&N Dec. 285, 286-287 (Reg. Comm. 1979) that:

> [W]hen it is shown that 51 percent or more of the stock of the employer corporation is owned by a foreign firm, such firm is a "foreign corporation" within the meaning of section 316(B). The fact that a firm is incorporated under the laws of a state of the United States does not necessarily determine that it is an American firm or corporation. The nationality of such firm would be determined by the nationality of those persons who own more than 51 percent of the stock of that firm.

See also Matter of Chawathe, 25 I&N Dec. 369 (AAO 2010).

In this matter, it is claimed that the applicant's Australian employer is wholly owned by the applicant's United States employer, a Florida corporation. However, while the applicant's claimed United States employer is a Florida corporation, the record is devoid of evidence establishing either the identities or the nationalities of the Florida corporation's stockholders. As explained above, at least 51% of the Florida corporation's stock must be owned by citizens of the United States in order for it to be classified as an "American firm or corporation." Unless the employer is established to be an "American firm or corporation," the applicant is not eligible to preserve his United States residence for naturalization purposes while being employed abroad by its wholly owned Australian affiliate.

Accordingly, the director is directed to review the record and request additional evidence establishing that the ownership of the applicant's employer and the percentage that were citizens of the United States as of the day the Form N-470 was filed, i.e., May 24, 2011. This evidence shall include: (1) a copy of all partnership agreements, corporate documents, and other pertinent evidence establishing the ownership structure of the firm; and (2) a list of all partners or owners as of May 24, 2011 along with evidence of their citizenship.

For this reason, the appeal may not be sustained, and the matter must be remanded to the director for further action. It is noted that the burden of proof in these proceedings rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

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 if adverse to the applicant.