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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: NOV 19 2014 Office: WASHINGTON, DC FILE: [redacted]

IN RE: Respondent: [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 RESPONDENT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Washington, D.C. (the director), denied the Application to Preserve Residence for Naturalization Purposes (Form N-470). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will remain denied.

Pertinent Facts and Procedural History

The applicant is a lawful permanent resident who 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 is employed by a public international organization of which the United States is a member by treaty or statute.

The 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. The application was denied accordingly.

On appeal, the applicant maintains that his absences from the United States were for "official short mission business trips overseas" and should not interrupt the continuity of his presence in the United States. *See* Statement of the Applicant Accompanying Form I-290B, Notice of Appeal or Motion.

Applicable Law

The AAO reviews these proceedings *de novo*. 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 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 . . . a public international organization of which the United States is a member by treaty or statute *and by which the alien was not employed until after being lawfully admitted for*

> *permanent residence*, 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 [Secretary of Homeland Security] 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 abroad is necessary to the protection of the property rights in such countries of such firm or corporation . . .; and
> >
> > (2) such person proves to the satisfaction of the [Secretary] that his absence from the United States for such period has been for such purpose.

(Emphasis added).

Analysis

The AAO reviews these proceedings *do novo*. The applicant was admitted to the United States as a permanent resident on April 7, 2010. He listed on his Form N-470, filed on July 6, 2011, that he was absent from the United States for periods of time from April 2010 through September 2010 and from February 2011 through March 2011. The applicant indicated that these trips were in conjunction with his official capacity as an employee of the . The applicant has been employed at the since February 1994. *See* Verification of Employment. The is a public international organization listed in the regulation at 8 C.F.R. § 316.20.

The applicant has failed to establish that he was physically present in the United States for at least one uninterrupted year since April 2010, the date he became a lawful permanent resident. His trips abroad between April 2010 and March 2011, whether for short official missions or otherwise, severed the continuity of his physical presence in the United States. *See Matter of Copeland*, 19 I&N Dec. 788, 789 (BIA 1988) (holding that "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 or present in the United States for an uninterrupted period during the period including the departure"); *Matter of Graves*, 19 I&N Dec. 337, 339 (Comm. 1985)(stating that "it is not possible to construe the uninterrupted physical presence requirement of section 316(b) to allow departures"). Consequently, the applicant is ineligible to preserve his residence for naturalization purposes under section 316(b) of the Act.[1]

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[1] Beyond the director's decision, the benefit available through the filing of a Form N-470 is available to an individual who "was not employed [by the public international organization of which the United States

Conclusion

It is the applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 316.2(b). Here, that burden has not been met.

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

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is a member by treaty or statute] until after being lawfully admitted for permanent residence . . . ." *See* Section 316(b) of the Act. The record demonstrates that the applicant has been employed by since 1994 and his Form N-470 may not be approved for this reason as well. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision.).