

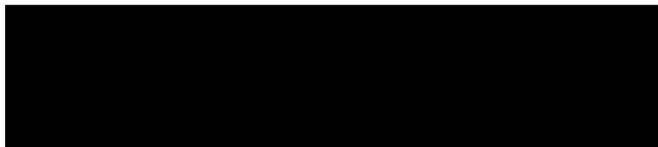
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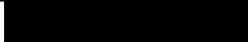
U.S. Citizenship
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Services

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Office: MIAMI, FL

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AUG 18 2008

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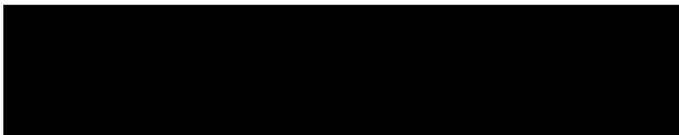
Applicant:



APPLICATION:

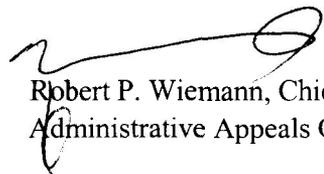
Application to Preserve Residence for Naturalization Purposes under Section 317 of the Immigration and Nationality Act, 8 U.S.C. § 1428.

ON BEHALF OF APPLICANT:



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, Chief
Administrative Appeals Office

DISCUSSION: The application to preserve residence for naturalization purposes was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision will be withdrawn and remanded to the director for the issuance of a new decision, which shall be certified to the AAO for review.

The applicant seeks to preserve his residence for naturalization purposes pursuant to section 317 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1428, as a lawful permanent resident who is authorized to perform ministerial functions of a religious denomination having a bona fide organization within the United States or as one engaged solely by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States as a missionary.

The district director determined that the applicant failed to establish that he is eligible for consideration under section 317 of the Act because he failed to demonstrate that he was physically present and residing within the United States for an uninterrupted period of at least one year after being lawfully admitted for permanent residence in the United States. The application was denied accordingly.

The applicant asserts on appeal that the record establishes that he was physically present and residing in the United States from February 18, 2004 until February 22, 2005, a period of time that exceeds one year.

Section 316(a)(1) of the Act, 8 U.S.C. § 1427(a)(1), provides in pertinent part that:

No person . . . shall be naturalized, unless such applicant, (1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his application has been physically present therein for periods totaling at least half of that time[.]

Section 317 of the Act, 8 U.S.C. § 1428, provides an exception to the continuous residence and physical presence requirements set forth in section 316 of the Act, and states that:

Any person who is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or any person who is engaged solely by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States as a missionary, brother, nun, or sister, who

- (1) has been lawfully admitted to the United States for permanent residence,
- (2) has at any time thereafter and before filing an application for naturalization been physically present and residing within the United States for an uninterrupted period of at least one year, and
- (3) has heretofore been or may hereafter be absent temporarily from the United States in connection with or for the purpose of performing the ministerial or priestly

functions of such religious denomination, or serving as a missionary, brother, nun, or sister, shall be considered as being physically present and residing in the United States for the purpose of naturalization within the meaning of section 316(a), notwithstanding any such absence from the United States, if he shall in all other respects comply with the requirements of the naturalization law. Such person shall prove to the satisfaction of the Attorney General that his absence from the United States has been solely for the purpose of performing the ministerial or priestly functions of such religious denomination, or of serving as a missionary, brother, nun, or sister.

In the present matter, the applicant adjusted to permanent resident status in the United States on May 20, 2000. According to the attachment to the Form N-470, the applicant was physically present in the United States from February 18, 2004 until February 22, 2005. The entry and exit stamps in applicant's passport generally corroborate this claim. Accordingly, it appears more likely than not that the applicant was physically present in the United States for an uninterrupted period of at least one year, and the district director's decision shall be withdrawn.

However, upon review, the applicant has not submitted sufficient evidence to establish eligibility for the benefit sought. While not addressed by the district director, the applicant failed to establish (1) that he is authorized to perform ministerial or priestly functions of a religious denomination having a bona fide organization within the United States or is engaged solely by a religious denomination or an interdenominational mission organization having a bona fide organization within the United States as a missionary; or (2) that his absences from the United States were or will be in connection with, or for the purpose of performing, the ministerial or priestly functions of such religious denomination or missionary work.

In this matter, the applicant submitted a letter dated November 6, 2006 from a pastor associated with the Living Word of Jesus Christ church and a list of absences from the United States. The letter claims that the Living Word of Jesus Christ church has been "the base of [the applicant's] operations" in the United States as an "itinerant preacher/evangelist of the Gospel." The applicant's Form AR-11 in the record indicates that the beneficiary is "self employed." The letter also indicates that the applicant receives no remuneration from the church and that he was supported abroad by "love gifts and honorariums" from the churches where he ministers. However, the letter does not identify any of these churches or fellowships. Accordingly, the record is not persuasive in establishing that the applicant is authorized to perform ministerial, priestly, or missionary functions of a religious denomination having a bona fide organization within the United States.

Furthermore, the record fails to establish what, exactly, the beneficiary will do during his absences from the United States. The applicant fails to establish any past or future engagements, sponsorships, invitations, or itineraries associated with his evangelism. The list of past absences from the United States only vaguely describes his trips abroad as "preaching and ministering the Gospel." Accordingly, the record is not persuasive in establishing that his absences from the United States were, or will be, connected with the ministerial, priestly, or missionary functions of a religious denomination.

Accordingly, the director is directed to review the record and request the following pertinent additional evidence:

- (1) Evidence that the applicant is "authorized" to perform ministerial or priestly functions of a religious denomination having a bona fide organization within the United States or is "engaged" solely by a religious denomination or an interdenominational mission organization having a bona fide organization within the United States as a missionary; and
- (2) Evidence that the applicant's absences from the United States were or will be in connection with, or for the purpose of performing, the ministerial or priestly functions of such religious denomination, or missionary work. Such evidence should include invitations, agendas, or schedules, including the names, addresses, and contact information for foreign churches and fellowships to be visited. The evidence should also include a list of churches, fellowships, and organizations visited by the applicant during his past trips, along with pertinent contact information.

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.