

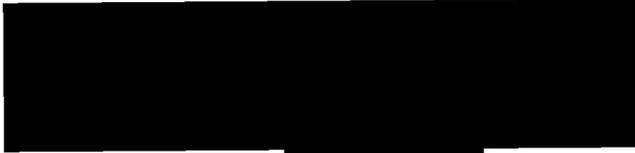


U.S. Citizenship
and Immigration
Services

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FILE:

Office: ST. LOUIS, MO

Date:

AUG 26 2008

IN RE:

Applicant:



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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application to preserve residence for naturalization purposes was denied by the Field Office Director, St. Louis, Missouri. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

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, the applicant asserts that the record establishes that he was physically present in the United States from September 4, 2004 until October 14, 2005, a period which exceeds one year. The applicant also submits a copy of a list of all his trips outside of the United States between 2001 and 2007, which is identical to the list submitted with the Form N-470 and which clearly indicates that he did not travel abroad between September 4, 2004 and October 14, 2005.

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 presented 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 September 12, 2001. The current application to preserve residence for naturalization purposes was filed on November 21, 2007. As noted above, the applicant submitted a list of absences from the United States in response to question 3 in part 3 of the Form N-470. This attachment indicates that he did not travel abroad between September 4, 2004 and October 14, 2005. The applicant also submitted a copy of his passport. The entry and exit stamps in his passport generally corroborate his claim to have been physically present in the United States from September 4, 2004 until October 14, 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, i.e., from September 4, 2004 until October 14, 2005.

The field office director's decision shall be withdrawn, the appeal is sustained, and the application approved.

ORDER: The appeal is sustained.