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FILE:



Office: MIAMI, FL

Date:

DEC 01 2008

IN RE:

Applicant:



APPLICATION:

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

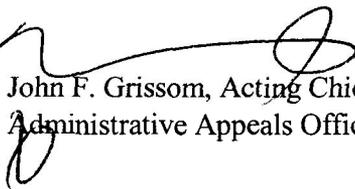
ON BEHALF OF APPLICANT:



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.

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 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 appeal will be dismissed, and the N-470 application will be denied.

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.

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 director indicated that the applicant failed to provide a complete list of all trips outside of the United States after being admitted as a lawful permanent resident on December 23, 1992. Specifically, the director indicated that the applicant failed to list his trips outside of the United States from December 23, 1992 until December 31, 1999. The director also noted that many of the entry and exit stamps in the applicant's travel documents are illegible. The application was denied accordingly.

On November 5, 2007, the applicant filed an appeal. Counsel claims that it was inappropriate to "penalize" the applicant for the illegibility of the entry and exit stamps and asserts that the applicant has established that he has been physically present in the United States since August 2006.

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 was admitted as a lawful permanent resident on December 23, 1992. In response to the query in the Form N-470 pertaining to absences abroad, and in response to the director's Request for Evidence, the applicant submitted lists of absences outside of the United States. These documents collectively list only the applicant's trips abroad after February 23, 2000 and indicate that the applicant was not physically present in the United States for one continuous year after that date. The documents also fail to identify any trips abroad prior to February 23, 2000. Furthermore, the applicant submitted copies of his passport and travel documents. These documents contain dozens of entry and exit stamps, some dating from prior to February 23, 2000.

On October 11, 2007, the district director denied the application for failure to establish physical presence and residence within the United States for an uninterrupted period of at least one year after December 23, 1992. The director indicated that the applicant failed to provide a complete list of all trips outside of the United States after being admitted as a lawful permanent resident and that many of the entry and exit stamps in the applicant's travel documents are illegible.

On appeal, counsel claims that it was inappropriate to "penalize" the applicant for the illegibility of the entry and exit stamps and asserts that the applicant has established that he has been physically present in the United States since August 2006. The instant Form N-470 was filed on February 21, 2007.

Upon review, counsel's arguments are not persuasive.

As explained above, in order to be eligible to preserve residence under Section 317 of the Act, the applicant must have been physically present and residing within the United States for an uninterrupted period of at least one year after his admission as a lawful permanent resident on December 23, 1992. In this matter, the applicant has failed to establish his physical presence and residence in the United States for one continuous

year between December 23, 1992 and February 21, 2007, the filing date of the instant Form N-470. As noted above, the applicant submitted an incomplete list of his trips abroad between these dates. While the applicant submitted a list of trips which indicate he was not physically present in the United States for one continuous year between February 23, 2000 and February 21, 2007, the applicant did not list his trips abroad between December 23, 1992 and February 23, 2000 even though the director specifically requested such a list. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

While the applicant did submit copies of his passport and travel documents, many of these exit and entry stamps, including stamps which are likely from the time period for which the applicant did not submit a list of trips abroad, are illegible. Therefore, it cannot be concluded from these copies whether the applicant was more likely than not physically present and residing in the United States for one continuous year after December 23, 1992. In fact, given the frequency and pattern of travel exhibited by those exit and entry stamps which are legible, it appears unlikely that the applicant was physically present in the United States for one continuous year. It is emphasized that the burden of proof in these proceedings rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

Furthermore, counsel's argument on appeal that the applicant has been physically present and residing in the United States since August 2006 is not persuasive. The instant Form N-470 was filed on February 21, 2007. As this filing date is not more than one year after August 2006, the applicant's alleged physical presence after February 21, 2007 cannot be used to qualify the applicant for the benefit sought. The applicant must establish eligibility at the time of filing the application. An application may not be approved at a future date after the he becomes eligible under a new set of facts. *Cf. Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Regardless, it is noted that counsel's claim that the applicant has been physically present in the United States since August 2006 is inconsistent with the list of absences submitted by the applicant. The applicant's list of absence identifies approximately 25 separate trips outside of the United States between August 2006 and July 2007. Counsel offers no explanation for this inconsistency. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See id.* at 591.

Accordingly, the applicant has failed to establish that he has been physically present and residing within the United States for an uninterrupted period of at least one year after his admission as a lawful permanent resident on December 23, 1992, and the application may not be approved for that reason.

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