



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

[REDACTED]

E1

FILE:

[REDACTED]

Office: MIAMI, FL

Date:

DEC 01 2008

IN RE:

Applicant:

[REDACTED]

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:

[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 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.

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 district director determined that the applicant was not eligible for benefits under section 316(b) of the Act. As the application fails to establish the relationship between the applicant's United States employer and the "affiliate company" in Japan, the director concluded that the applicant failed to establish that he is employed abroad by an American firm or corporation or a subsidiary thereof. The director further indicated that the applicant and his counsel failed to respond to the June 6, 2006 request for evidence, which sought information regarding the United States employer's relationship with the foreign employer in Japan.

On appeal, counsel claims that neither he nor the applicant ever received a copy of the June 6, 2006 request for evidence. Accordingly, counsel supplements the record on appeal with additional evidence addressing the relationship between the applicant's United States employer and the foreign employer in Japan. This evidence indicates that the United States employer is a Florida corporation and that this Florida corporation wholly owns the applicant's employer in Japan.

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.

As a threshold matter, the AAO will address counsel's alleged failure to have received a copy of the June 6, 2006 request of evidence.

As noted above, the district director issued a request for evidence on June 6, 2006 requesting additional evidence addressing the relationship between the applicant's United States employer and his foreign employer in Japan. However, neither counsel nor the applicant responded to this request for evidence and, on appeal, counsel claims that neither party ever received a copy of it. Upon review, the AAO notes that the record contains a copy of the request for evidence bearing counsel's proper mailing address and concludes that it is more likely than not that the request for evidence was properly sent to counsel on or about June 6, 2006. Accordingly, the director properly denied the application on the record. *See* 8 C.F.R. § 103.2(b)(13). However, as the director did not summarily deny the application as abandoned, the AAO will exercise its discretion and consider the evidence submitted on appeal even though this evidence should have been submitted in response to the June 6, 2006 request for evidence.

Accordingly, the primary substantive issue in the present matter is whether the applicant has established that he is employed by an "American firm or corporation" or a subsidiary thereof.

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*, A74 254 994 (AAO January 11, 2006).

In this matter, it is claimed that the applicant's Japanese 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 Japanese subsidiary.

The burden of proof is on the applicant to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed, and the application will be denied.

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