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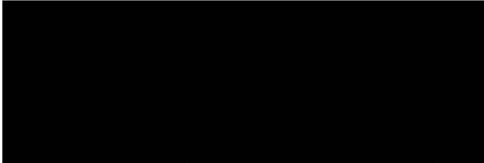
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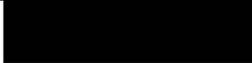
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER Date: **FEB 13 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.

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will be denied.

The applicant seeks to preserve her 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 an American firm or corporation (Intelsat Corporation) engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof.

The director determined that the applicant was not eligible for benefits under section 316(b) of the Act because she was employed by Intelsat Corporation (previously known as Intelsat Global Service Corporation) before she became a U.S. lawful permanent resident. The application was denied accordingly.

On appeal, the applicant asserts that the section 316(b) of the Act bar referred to by the director applies only to persons who have been employed by a public international organization prior to obtaining U.S. lawful permanent resident status. The applicant asserts that the section 316(b) of the Act bar does not apply to persons who were employed by an American firm or corporation prior to obtaining lawful permanent resident status. The applicant indicates that her employer has been an American corporation since 2001. She concludes that she is thus not required to establish that her employment with Intelsat Corporation occurred after she became a U.S. lawful permanent resident.

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 . . . 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, **or** 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 Attorney General [now Secretary, Department of 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 abroad is necessary to the protection of the property rights in such countries of such firm or corporation, **or** to be 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; 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 AAO notes that the statutory language contained in section 316(b) of the Act does not require a person to establish that he or she became a U.S. lawful permanent resident subsequent to the commencement of employment with an American firm or corporation. Rather, the statutory language specifying that an alien may not be employed by an organization prior to lawful admission for permanent residence refers only to section 316(b) of the Act provisions discussing employment by a public international organization. The Board of Immigration Appeals (Board) further clarifies § 316(b) of the Act provisions in *Matter of Warrach*, 17 I&N Dec. 285, 286 (BIA 1979), by stating that an alien who began employment with a U.S. company prior to becoming a U.S. lawful permanent resident need only demonstrate that he was physically present and residing in the United States after being lawfully admitted for permanent residence, for at least one year prior to his employment abroad.

In the present matter, the record reflects that the applicant obtained a G-4 nonimmigrant visa as an employee of Intelsat Services Corporation in October 2001. Prior to October 2001, the applicant was employed in Africa by Intelsat Global Corporation in Africa. She began her employment there in July 1997. It is noted that G-4 nonimmigrant visa status is accorded to members of international organizations. The record reflects that based on her employment with Intelsat Services Corporation, the applicant was admitted into the United States as a G-4 durational status nonimmigrant, as late as June 16, 2002.

Delaware Certificate of Incorporation documentation contained in the record reflects that the applicant's employer, Intelsat Services Corporation became incorporated in Delaware on January 10, 2001, and that they changed their business name to Intelsat Global Service Corporation on July 19, 2001. The applicant indicates that she became a U.S. lawful permanent resident on July 2, 2004, pursuant to a September 19, 2002, immigrant visa petition filed by the Delaware incorporated company, Intelsat Global Service Corporation. The applicant continues to work for the company, which is now known as Intelsat Corporation. The applicant indicates that she has thus established that her employer is not a public international organization, and that the fact that she was employed by Intelsat Corporation prior to becoming a lawful permanent resident does not affect her eligibility for consideration under section 316(b) of the Act.

The record demonstrates that the applicant's employer has been incorporated in Delaware since January 2001. However, the AAO finds that the applicant failed to establish that her employer is an American corporation engaged in whole or in part, in the development of foreign trade and commerce of the United States, or that

the applicant will work for a company abroad of which more than 50% of the stock is owned by the applicant's employer.

The record contains a February 7, 2007, letter from Intelsat, Senior Director, Human Resources Operations, stating that the applicant is employed by Intelsat Corporation, and that the applicant has been assigned to the Intelsat South Africa (Pty) Ltd. office for an initial period of eighteen months. The letter states that the applicant will remain an Intelsat Corporation employee, and that the applicant will continue to be paid in U.S. dollars. The letter states further that Intelsat South Africa (Pty) Ltd. is a wholly owned subsidiary of Intelsat (Bermuda) Ltd.

Intelsat Certificate of Ownership evidence dated September 15, 2006, reflects that Intelsat (Bermuda), Ltd., is a wholly owned subsidiary of Securities and Exchange Commission compliant registrant Intelsat, Ltd, and the letter reflects Intelsat (Bermuda), Ltd.'s acquisition and merger with several other companies. The letter states that:

[A]s a result of the completion of the Acquisition, PanAmSat HoldCo became 100% owned by Intelsat (Bermuda), Ltd. Following the completion of the Acquisition, the name of PanAmSatHoldCo was changed to Intelsat Holding Corporation, and the name of PanAmSat Corporation, a wholly owned subsidiary of PanAmSat Holdco, was changed to Intelsat Corporation.

The letter states further that, "[p]rior employees of Intelsat Global Service Corporation, a wholly owned subsidiary of Intelsat (Bermuda), Ltd. have been reassigned as employees of Intelsat Corporation. Intelsat Corporation has the ability to pay the salary offered to the sponsored employee."

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 Immigration and Naturalization Service Regional Commissioner stated in *Matter of Warrach, supra* at 286-87, 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.

A publicly held corporation may be deemed an American firm or corporation if the applicant establishes that the corporation is both incorporated in the United States and trades its stock exclusively on U.S. stock exchange markets.

In the present matter, the evidence in the record establishes that the applicant's employer, Intelsat Corporation, is incorporated in Delaware. However, the record lacks evidence regarding the nationality of the stockowners of the company. The record additionally lacks evidence that Intelsat Corporation is a publicly held corporation that trades its stock exclusively on U.S. stock exchange markets. Moreover, even assuming

that Intelsat Corporation is an American corporation, the record lacks any evidence to establish that Intelsat Corporation engages in business or commerce in South Africa, or that Intelsat South Africa (Pty), Ltd. qualifies as a subsidiary of Intelsat Corporation. The record additionally lacks evidence to establish that Intelsat Corporation and Intelsat South Africa (Pty) Ltd.'s parent organization, Intelsat (Bermuda) Ltd., or its parent organization, Intelsat, Ltd., qualify as American firms or corporations, as defined above. The AAO therefore finds that the applicant failed to establish that she qualifies for consideration under § 316(b) of the Act.<sup>1</sup> Accordingly, the appeal will be dismissed and the application will be denied.

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

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<sup>1</sup> It is noted that passport evidence contained in the record also reflects that the applicant has not been physically present and residing in the United States for an uninterrupted period of at least one year after being admitted for lawful permanent residence, as required by section 316(b) of the Act.