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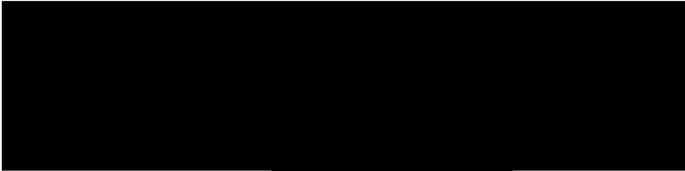
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: SAN JOSE, CA

Date:

MAR 28 2008

IN RE:

Applicant:



APPLICATION:

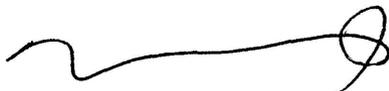
Application to Preserve Residence for Naturalization Purposes under Section 316(b) of the Immigration and Nationality Act, 8 U.S.C. § 1427(b).

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 Form N-470, Application to Preserve Residence for Naturalization Purposes (N-470 Application) was denied by the District Director, San Jose, California. 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 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 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 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. The application was denied accordingly.

On appeal the applicant asserts that the trips abroad that occurred after being admitted for permanent residence were related to the development of foreign trade or commerce of the United States.

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 addresses the effect of absences during the required five-year period of continuous residence and 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 . . . 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.

(Emphasis added). “[I]t is not possible to construe the uninterrupted physical presence requirement of section 316(b) to allow departures.” *Matter of Graves*, 19 I&N Dec. 337, 339 (Comm. 1985).

[A]ny departure from the United States for any reason or period of time bars a determination that an alien has been continuously physically present in the United States or present in the United States for an uninterrupted period during the period including the departure. An applicant’s failure to establish he or she has been present in the United States for 1 year after lawful admission for permanent residence bars eligibility for preservation under section 316(b).

*Matter of Copeland*, 19 I&N Dec. 788, 789 (Comm. 1988); see also *INS v. Phinpathya*, 464 U.S. 183 (1984) (holding that the term "continuous," as used in the suspension of deportation provision at section 244 of the Act, did not readily admit any exception).

In the present matter, the applicant was lawfully admitted for permanent residence in the United States on October 9, 2001. According to the attachment to the Form N-470, the applicant was absent from the United States from June 29, 2002 until July 27, 2002; December 1, 2002 until December 23, 2002; March 10, 2003 until June 20, 2003; and July 1, 2003 until September 20, 2003. It also appears that the applicant again departed the United States on October 6, 2003, the same day the instant Form N-470 was filed with Citizenship and Immigration Services (CIS).

Therefore, and as correctly noted by the director, the record indicates that the applicant has not been continuously physically present in the United States for the requisite one-year period after being lawfully admitted for permanent residence. Accordingly, the applicant is not eligible for the benefit sought. Although the applicant claims that his absences were related to the development of foreign trade or commerce of the United States, the reason for these absences during the one-year physical presence period is not relevant. As noted above, "any departure from the United States for any reason or period of time bars a determination that an alien has been continuously physically present in the United States." *Id.* at 789.

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.