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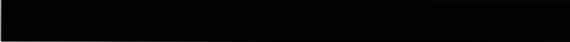
Office: LOS ANGELES, CA

Date:

MAY 02 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, Los Angeles, 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 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 a "public international organization of which the United States is a member by treaty or statute."

The district director determined that the applicant did not establish eligibility under section 316(b) of the Act because she failed to establish that her employer, the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, which is headquartered in Austria, is a public international organization of which the United States is a member by treaty or statute. Specifically, the district director noted that the beneficiary's employer is not on the list of public international organizations appearing in 8 C.F.R. § 316.20. The application was denied accordingly.

On appeal, the applicant claims that the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization is a "public international organization" for purposes of section 316(b) of the Act because the United States is a signatory to the treaty creating the organization and because the employer is listed by the United Nations as an associated organization. As the United Nations and "all agencies and organizations which are a part thereof" are specifically listed as public international organizations in 8 C.F.R. § 316.20, the applicant asserts that her employment by the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization qualifies her to preserve residence for naturalization purposes under section 316(b) of the Act.

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 (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 a public international organization of which the United States is a member by treaty or statute* . . . 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 employed by a public international organization of which the United States is a member by treaty or statute . . . 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 this matter is whether the applicant has established that she is employed by a public international organization of which the United States is a member by treaty or statute.

The regulation at 8 C.F.R. §§ 316.20(b)-(c) describes what constitutes a "public international organization" for purposes of section 316(b) as follows:

(b) *Public international organizations of which the United States is a member by treaty or statute.* The following-listed organizations have been determined to be public international organizations of which the United States is a member by treaty or statute:

The North Atlantic Treaty Organization.

United Nations and all agencies and organizations which are a part thereof.

(c) *International Organizations Immunities Act designations.* The following public international organizations are entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Immunities Act, and are considered as public international organizations of which the United States is a member by treaty of statute within the meaning of section 316(b) of the Act:

The regulation at 8 C.F.R. § 316.20(c) then lists 52 organizations, including the United Nations, along with a references to pertinent executive orders which each declare the corresponding organization to be a "public international organization." While the regulation separately lists organizations which are clearly associated with the United Nations, such as the United Nations Educational, Scientific, and Cultural Organizations (E.O. 9863, May 31, 1947), the regulation does not list the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization.

As the regulation at 8 C.F.R. § 316.20(c) makes reference to the International Organizations Immunities Act ("IOIA") for purposes of identifying "public international organizations" under section 316(b) of the Act, it is noted that the IOIA defines "international organization" as follows:

[T]he term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation,

and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter.

22 U.S.C.A. § 288.

It is further noted that an annotation to 22 U.S.C.A. § 288 lists 82 international organizations along with references to pertinent executive orders and the Federal Register. Once again, while the annotation separately lists organizations which are associated with the United Nations, such as the Organization for the Prohibition of Chemical Weapons (E.O. 13049, (Jun. 16, 1997)), the annotation does not list the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization.

Upon review, the applicant's assertions are not persuasive in establishing that the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization is a "public international organization" for purposes of section 316(b) of the Act because (1) the employer is not an organization of which the United States is a member by treaty or statute, and (2) the employer is not an agency or organization which is a part of the United Nations. Accordingly, the director properly denied the application.

First, the record is not persuasive in establishing that the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization is an international organization "of which the United States is a member by treaty or statute." The Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization was formed by the Comprehensive Nuclear-Test-Ban Treaty, or CTBT, which assigned to the organization the responsibility for implementing the CTBT. 143 Cong. Rec. S9808-04 (daily ed. Sept. 23, 1997). However, while President Clinton signed the CTBT on September 24, 1996 (*see id.*), the United States Senate ultimately rejected ratification of the CTBT on October 13, 1999. 145 Cong. Rec. S12548 (daily ed. Oct. 13, 1999). Accordingly, the United States is not a member of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization by treaty or statute, and the application may not be approved for that reason.

Second, the record is not persuasive in establishing that the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization is an agency or organization which is a part of the United Nations. In this matter, the applicant submits evidence that her foreign employer is listed by the United Nations on a chart of "principal organs" as a "related organization," akin to the Organization for the Prohibition of Chemical Weapons. However, this evidence is not persuasive in establishing that the employer is an "agency or organization" which is part of the United Nations for purposes of section 316(b) of the Act and 8 C.F.R. § 316.20(b).

As noted above, 8 C.F.R. § 316.20(b) states that the United Nations and all agencies and organizations which are a part thereof are considered to be "public international organizations" for purposes of section 316(b) of the Act. However, as explained above, the United States Senate rejected ratification of the CTBT, and, thus, the United States is not a member of this specific organization by treaty or statute. Furthermore, it appears that United States law treats organizations affiliated with the United Nations and created by separate treaty differently depending on whether or not the United States has ratified the treaty. For example, the United States ratified the Chemical Weapons Convention on April 24, 1997, which established the membership of

the United States in the Organization for the Prohibition of Chemical Weapons (OPCW). Thereafter, on June 16, 1997, President Clinton by executive order recognized the OPCW as an international organization under the IOIA. (E.O. 13049 (June 16, 1997)). However, the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, which is listed directly next to the OPCW as a "related organization" on the chart of "principal organs" of the United Nations submitted by the applicant, has not received the same treatment as the OPCW, presumably because the United States Senate never ratified the CTBT. Accordingly, only those organizations created by treaty of which the United States is a member by statute or treaty, such as the OPCW, or which have been specifically recognized by statute or executive order, shall be considered "organizations" of the United Nations for purposes of 8 C.F.R. §§ 316.20(b). Consequently, the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization is not an agency or organization of the United Nations, and, thus, is not a "public international organization" for purposes of section 316(b) of the Act.

That being said, it must be noted that the district director's sole reliance on the list of organizations in 8 C.F.R. § 316.20(c) in denying the application was in error, albeit harmless given that the applicant's employer is not a "public international organization." The regulation at 8 C.F.R. § 316.20(c) does not claim to be an exhaustive list of "public international organizations." In fact, upon reviewing the annotations to 22 U.S.C.A. § 288, it appears that the current version of 8 C.F.R. § 316.20(c) fails to list 30 organizations which have since been designated by the president by executive order to be "international organizations" under the IOIA, including the World Trade Organization (E.O. 13042 (Apr. 9, 1997)), the Organization for the Prohibition of Chemical Weapons (E.O. 13049 (June 16, 1997)) and the Global Fund to Fight AIDS, Tuberculosis and Malaria (E.O. 13395 (Jan. 13, 1996)).

Therefore, in adjudicating an N-470 Application to Preserve Residence for Naturalization Purposes based on employment abroad by public international organizations, the director should request evidence from applicants pertaining to whether the foreign employer is indeed a "public international organization" of which the United States is a member by treaty or statute in the event the claimed employer does not appear on the promulgated list. An employer's failure to appear on the list at 8 C.F.R. § 316.20(c) is only the first step in determining whether a claimed foreign employer is a "public international organization" as described in section 316(b) of the Act, and the absence of such an organization from that list should not automatically result in the denial of an Application to Preserve Residence for Naturalization Purposes. However, as the applicant bears the burden of proof in these proceedings, the applicant must establish that the claimed foreign employer is indeed a "public international organization" as described in the Act. *See* Section 291 of the Act, 8 U.S.C. § 1361.

As the applicant has failed to meet her 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.