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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**

E-1

FILE:

Office: CLEVELAND, OH

Date: NOV 25 2008

IN RE:

Applicant:

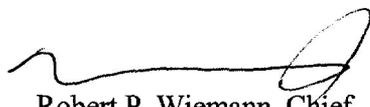
APPLICATION:

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:

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 application to preserve residence for naturalization purposes was denied by the Field Office Director, Cleveland, Ohio. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal is sustained and the application will be approved.

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 abroad under contract with the Government of the United States.

The field office 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 field office director concluded that, because the Form N-470 indicates that the applicant was absent from the United States from October 29, 2004 until the day the Form N-470 was filed, i.e., February 16, 2007, he was not eligible for the benefit sought.

On appeal, the applicant asserts that the record establishes that he was physically present in the United States from November 25, 2004 until July 1, 2006, a period in excess of one year. Counsel argues that the field office director must have made a clerical error since the applicant did not even receive his immigrant visa until November 23, 2004.

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.

(Emphasis added.)

The primary issue in the present matter is whether the applicant has established that he was physically present in the United States for an uninterrupted period of twelve months following admission as a permanent resident.

The record indicates that the applicant was admitted as a permanent resident in the United States on November 25, 2004. The current application to preserve residence for naturalization purposes was filed on February 16, 2007. The applicant asserts in the Form N-470 that he was physically present in the United States from November 25, 2004 until he was deployed to serve as a linguist in Iraq for the United States military on or about July 1, 2006. The applicant's travel and passport records corroborate the applicant's assertion. Furthermore, upon review, the field office director's determination that "[t]he Form N-470 signed by the applicant, indicated that he was absent from the United States from October 29, 2004 to the date of filing of the Form N-470" is not consistent with the applicant's assertion in the Form N-470. To the contrary, the applicant claims in the Form N-470 to have left the United States on June 23, 2006. Accordingly, the AAO agrees that the field office director erred and that the record establishes that it is more likely than not that the applicant was physically presented in the United States for an uninterrupted period of at least one year following admission as a permanent resident, i.e., from November 25, 2004 until approximately July 1, 2006.

The field office director's decision shall be withdrawn, the appeal is sustained, and the application will be approved.

ORDER: The appeal is sustained.