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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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JUL 09 2009

FILE: [Redacted] Office: DALLAS, TX Date:

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application to preserve residence for naturalization purposes was denied by the Field Office Director, Dallas, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The applicant seeks to preserve her residence for naturalization purposes pursuant to section 316(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1427(b). The district director determined that the applicant was not eligible for consideration under section 316(b) of the Act because she failed to demonstrate that she 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 November 16, 2007, a vice president of the applicant's husband's employer filed a Form I-290B with the field office purporting to appeal the decision of the director dated October 15, 2007. U.S. Citizenship and Immigration Services (USCIS) regulations only permit an "affected party" or his or her representative to file an appeal. 8 C.F.R. § 103.3(a)(2)(i). "Affected party" means the person or entity with legal standing in a proceeding and does not include a beneficiary of a visa petition. 8 C.F.R. § 103.3(a)(1)(iii)(B). A vice president of an employer of a U.S. citizen spouse of an applicant seeking a benefit through the filing of a Form N-470 is not an "affected party" in this matter.

As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

Regardless, it is noted that the beneficiary is not entitled to the benefit sought, and the appeal would be dismissed, even if the instant appeal were not being rejected.

In order to be naturalized as a United States citizen based upon marriage to a U.S. citizen, the Act requires in part, that a person reside continuously in the United States as a lawful permanent resident for at least three 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 section 319(a) of the Act, 8 U.S.C. § 1430(a). Section 316(b) of the Act addresses the effect of absences during the required 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 (BIA 1988).

In the present matter, the applicant was lawfully admitted for permanent residence in the United States on December 2, 2004. According to the brief submitted on appeal, the applicant was absent from the United States from December 18, 2004 until January 2, 2005; November 19, 2005 until November 26, 2005; March 10, 2006 until March 17, 2006; December 23, 2006 until January 14, 2007; and May 22, 2007 until May 31, 2007. The Form N-470 was filed on August 29, 2007.

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. 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.

ORDER: The appeal is rejected.