

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

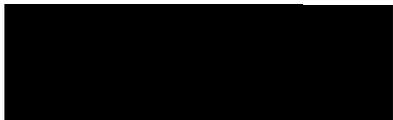
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

61



FILE: Office: SAN FRANCISCO, CA Date: **JUL 28 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Form N-470, Application to Preserve Residence for Naturalization Purposes (N-470 Application) was denied by the Field Office Director, San Francisco, 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 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 field office director determined that the applicant did not establish eligibility under section 316(b) of the Act because she failed to establish that her employer is majority owned by citizens of the United States. The application was denied accordingly.

On appeal, the applicant submits additional evidence which she asserts establishes that her employer is majority owned by United States citizens. The applicant submits a list of stockholders, copies of stock certificates issued to the majority owners, and copies of United States passports purported to belong to the employer's majority stockholders.

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 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.

The primary issue in this matter is whether the applicant has established that she is employed by an American firm or corporation or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or corporation.

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 legacy Immigration and Naturalization Service Regional Commissioner stated in *Matter of Warrach*, 17 I&N Dec. 285, 286-287 (Reg. Comm. 1979) 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.

See also *Matter of Chawathe*, [REDACTED] (AAO January 11, 2006).

In this matter, the applicant submitted a "Certificate of Corporate Resolution" dated February 5, 2008 identifying his employer's six shareholders owning a total of 57,935 issued shares. For three of these purported shareholders [REDACTED] and [REDACTED], owning collectively a claimed 37,520 shares, the applicant submitted United States passports. The applicant did not submit information pertaining to the other three stockholders. However, the stock certificates supposedly representing [REDACTED] and [REDACTED] ownership interests do not list these individuals as the shareholders. Instead, the owners listed in the stock certificates are "The [REDACTED] Family Trust" and "[REDACTED]"

The applicant failed to submit any evidence pertaining to these trusts. The applicant did not submit copies of the trust instruments or establish the identities of the trustors, trustees, beneficiaries, or relevant jurisdictions of formation. Absent such key evidence, it cannot be concluded that these trusts, which may have some connection to United States citizens, may be considered to have United States nationality. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Accordingly, it has not been established that the applicant's employer is an "American firm or corporation," and the application may not be approved for this reason.

Beyond the decision of the acting district director, the applicant has failed to establish that she has been continuously physically present in the United States for the requisite one-year period after being lawfully admitted for permanent residence.

“[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 this matter, the record indicates that the applicant was lawfully admitted for permanent residence in the United States on August 12, 2002. According to the Form N-470 and copies of the applicant's passports, the applicant was absent from the United States, *inter alia*, on June 19, 2003; May 16, 2004; May 4, 2005; April 22, 2006; August 31, 2006; and May 12, 2007. The instant application was filed on April 17, 2008.

Therefore, 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 and the application will be denied for this additional reason.

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 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.