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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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JUL 28 2009

[REDACTED]

FILE: [REDACTED] Office: SAN FRANCISCO, CA 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.

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 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 appeal, counsel asserts that the applicant was physically present in the United States for more than one year but that, for some of the earlier travel dates, the applicant no longer has copies of the relevant passports or travel documents which could establish her dates of travel.

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 (BIA 1988).

In the present matter, the applicant was lawfully admitted for permanent residence in the United States on March 17, 1984. According to the attachment to the Form N-470, the applicant was absent from the United States as follows:

- August 9, 1985 until September 7, 1985
- August 10, 1986 until August 4, 1987
- August 17, 1988 until August 5, 1989
- August 2, 1990 until July 21, 1991
- August 15, 1991 until August 12, 1992
- July 29, 1993 until July 16, 1994
- July 20, 1995 until July 15, 1996
- September 2, 1997 until August 7, 1998

The instant application was filed on October 7, 1998.

Accordingly, the applicant claims to have been in the United States for over one continuous year after being admitted as a lawful permanent resident on four occasions:

- March 17, 1984 until August 9, 1985
- August 4, 1987 until August 17, 1988
- July 16, 1994 until July 20, 1995
- July 15, 1996 until September 2, 1997

However, as correctly noted by the field office director, the record is devoid of evidence substantiating these claims. 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)). Although counsel claims that the applicant no longer has copies of the relevant travel documents, this explanation is not sufficient to meet her burden of proof. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

It is further noted that the applicant's claims to being physically present in the United States are not supported by the copies of the travel documents and passports submitted as evidence or are inconsistent with earlier representations. For example, in an attachment submitted with a previously denied Form N-470 filed on January 26, 1996, the petitioner claims to have traveled outside the United States as follows:

- September 17, 1984 until September 7, 1985
- October 4, 1985 until August 4, 1987
- August 17, 1987 until August 5, 1989

- September 2, 1989 until July 21, 1991
- August 15, 1991 until August 12, 1992
- August 29, 1992 until July 16, 1994
- August 10, 1994 until, at least, the date the Form N-470 was filed (January 26, 1996)

These representations are inconsistent in almost every respect with the averments made in the instant Form N-470 pertaining to the applicant's periods of physical presence in the United States and undermine the credibility of the applicants claim to have been physically present in the United States for one continuous year for those three periods between March 17, 1994 and the filing of the previously denied Form N-470, i.e., January 26, 1996. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Moreover, the copies of the travel documents and passports submitted as evidence do not establish that the applicant was physically present in the United States from July 15, 1996 until September 2, 1997. Although the applicant has submitted a copy of a United States Reentry Permit which indicates that she was admitted the United States on July 15, 1996, there are no subsequent stamps in any of the travel documents or passports submitted as evidence until August 7, 1998, when she was admitted to the United States. Therefore, at some point between July 15, 1996 and August 7, 1998, the applicant must have left the United States. The applicant claims she did not travel until September 2, 1997 (over one year after her July 15, 1996 admission). However, the record is devoid of any evidence establishing that she traveled on or near that date. The travel documents and passports do not bear any entry or exit stamps pertaining to this departure, and the applicant failed to submit any copies of airline tickets, itineraries, or other evidence which could establish her dates of travel or physical presence in the United States. Once again, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Therefore, and as correctly noted by the director, the applicant has not established that she has 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.

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.