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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

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FILE: [REDACTED] Office: ATLANTA, GA Date: JUL 08 2010

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:

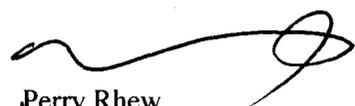
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application to preserve residence for naturalization purposes was denied by the District Director, Atlanta, Georgia. 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)(B)(1).

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). On December 1, 2008, the director denied the petition concluding that the applicant did not establish that he had the requisite one-year period of uninterrupted physical presence in the United States prior to his employment abroad.

The regulation at 8 C.F.R. § 103.3(a)(2) requires an affected party to file the complete appeal within 30 days after service of the decision, or, in accordance with 8 C.F.R. § 103.5a(b), within 33 days if the decision was served by mail. The record indicates that the decision of the director was mailed to the applicant on Monday, December 1, 2008. The applicant filed an appeal with U.S. Citizenship and Immigration Services on Tuesday, January 15, 2009, 45 days after the decision was served by mail.¹

Thus, the appeal was not timely filed and must be rejected on these grounds pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Even if the applicant had timely filed the appeal, the AAO notes that the director's decision would have been upheld. Pursuant to section 316(b) of the Act, an applicant may not file a Form N-470, Application to Preserve Residence for Naturalization Purposes, unless he or she "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." This required one year of uninterrupted presence is strictly construed. *Matter of Copeland*, 19 I&N Dec. 788 (Comm. 1988). In the present matter, the applicant has not demonstrated that he has that required minimum. The AAO notes that this decision does not bar the applicant from filing a new application after he remains in the United States for an uninterrupted one year period.

ORDER: The appeal is rejected.

¹It is noted that the applicant apparently attempted to file this appeal directly with the AAO on or about January 13, 2009. However, the regulations at 8 C.F.R. § 103.2(a)(6) and 8 C.F.R. § 103.3(a)(2)(i) require that the instant appeal be filed within 30 days with the Atlanta District Office, not directly with the AAO. The district office forwards appeals, such as the present matter, to the AAO only if it decides that favorable action is not warranted. 8 C.F.R. § 103.3(a)(2)(iii). The applicant's attempt to file this appeal directly with the AAO did not establish a receipt date of January 13, 2009, as this attempted filing violated the regulations. Therefore, the receipt date for the instant appeal was the day it was received by the Atlanta District Office, January 15, 2009, or 45 days after the decision was served by mail.