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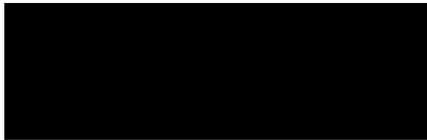
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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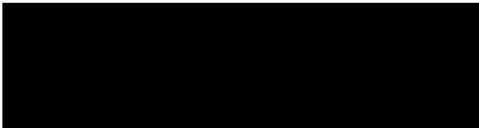
Office: CHICAGO, IL

Date: JUL 27 2010

IN RE: Applicant: 

APPLICATION: Application to Preserve Residence for Naturalization Purposes under Section 317 of the Immigration and Nationality Act, 8 U.S.C. § 1428.

ON BEHALF OF APPLICANT:



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, Chicago, Illinois. 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 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 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 district director determined that the applicant failed to establish that he is eligible for consideration under section 316(b) of the Act because he failed to demonstrate that he was physically present and residing within the United States for an uninterrupted period of at least one year after being lawfully admitted for permanent residence in the United States. The director also denied the petition because the applicant filed form N-470 fifteen months after moving overseas to fill the temporary assignment.

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). "[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).

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 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) of the Act.

Matter of Copeland, 19 I&N Dec. 788, 789 (Comm. 1988).

Contrary to counsel's assertion on appeal that *Matter of Copeland* "is wrong because it does not address the intent of Congress," the Copeland and Graves decisions remain the controlling precedents governing preservation of residence pursuant to section 316(b) of the Act.

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 applicant was lawfully admitted for permanent residence in the United States on July 8, 2005. On June 1, 2006, the applicant began a new job assignment overseas as Engineering and Business Development Manager for Methode Electronic Shanghai Automotive Division. The applicant filed the Form N-470 on September 14, 2007. In addition, the petitioner submitted a chart outlining his trips outside of the United States from July 12, 2005 until August 26, 2007 which indicate that the applicant was overseas for his employment for 114 days out of 333 days. On appeal, counsel for the petitioner asserts that the even though the applicant took several trips abroad, and moved abroad on June 1, 2006 for a temporary employment assignment, the trips and move are temporary and his absence has been casual and not interruptive of his permanent residency. Counsel further stated that the applicant maintained his ongoing residence in the United States, including a "home and other contacts."

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. In addition, the applicant moved overseas for a temporary work assignment on June 1, 2006 but did not file the Form N-470 until September 14, 2007. As noted by the director, the applicant filed the Form N-470 fifteen months after moving overseas. The N-470 application may be filed either before or after the applicant leaves the United States, but 8 C.F.R. § 316.5(d)(1)(i) requires that it be filed before the applicant has been absent from the United States for a continuous period of one year. Thus, as the applicant applied over one year after moving overseas, the application must be denied.

The burden of proof in these proceedings rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is dismissed. The petition is denied.