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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: NEW YORK, NY Date: JUL 27 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:



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, New York, New York, and 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 application was denied accordingly.

Section 316(b) of the Act provides, in pertinent part, that:

Absence 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).

The legacy INS and United States Citizenship and Immigration Services (USCIS) have long interpreted the term "uninterrupted physical presence" to bar any departure from the United States. "[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). In *Matter of Copeland*, the Commissioner of legacy INS stated:

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).

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

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 became a lawful permanent resident on June 11, 2006. On appeal, counsel for the petitioner explained that during the summer of 2007, the applicant became employed by [REDACTED], a company incorporated in New York. As part of his new employment, the applicant was to travel abroad. In addition, the applicant was transferred from New York to the company's Asia headquarters in Shanghai, China and has been employed by [REDACTED] in Shanghai, China since December 17, 2007. On February 22, 2008, the applicant filed form N-470.

On appeal, counsel for the applicant asserts that the denial notice "alleged incorrect information regarding the number of days that the Applicant was absent from the US." Counsel stated that the director's statement that the applicant had been absent from the US lasting as long as 4 years was incorrect. The AAO withdraws this statement only. Counsel further asserts that the "Applicant was merely absent from US for 112 days between the day Applicant became permanent resident and the day that Applicant filed the underlying N-470 Application." Counsel asserts that the applicant "was not able to maintain an uninterrupted physical presence in the US for 1 year"; however, the applicant "was in good faith regarding his permanent residency." Counsel contends that the applicant maintained uninterrupted residency periods in the U.S. for "as long as 246 days, in addition to two more interrupted residency periods of 173 and 123 days." In addition, counsel explained that the applicant's travel abroad is due to "employment necessity."

Therefore, as correctly noted by the director, and as counsel for the applicant acknowledges and the record indicates, 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.

It is noted that 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 application is denied.