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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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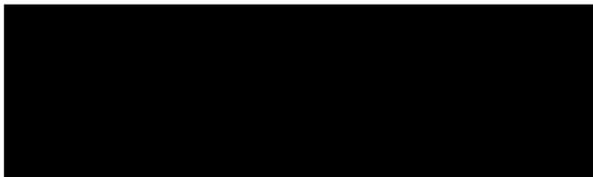
Office: INDIANAPOLIS

Date: OCT 04 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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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, Indianapolis, Indiana. 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 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 outside of the United States on behalf of the U.S. government.

The district director determined that the applicant failed to establish that she is eligible for consideration under section 316(b) of the Act because she failed to demonstrate that she 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:

[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).

[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).

The issue in the present matter is whether the applicant has established that she 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 September 16, 2004. The applicant filed the Form N-470 on April 28, 2009. As part of the supporting documentation, the applicant submitted a chart outlining her trips outside of the United States starting from March 2, 2005 until September 18, 2008. According to the applicant's chart of trips, she did not stay in the U.S. for one uninterrupted year since obtaining her permanent residence status.

On appeal, counsel for the applicant explained that around September 23, 2008, the applicant filed an application to preserve residence for naturalization purposes and she submitted a "complete table of her absences from the United States since gaining permanent resident status on September 16, 2004." On November 6, 2008, United States Citizenship and Immigration Services (USCIS) issued a Notice of Approval of Application to Preserve Residence to the applicant that stated, "your application to preserve residence for naturalization purposes has been approved to cover your absence from the United States from March 22, 2008, to an indefinite date thereafter for as long as you remain absent on behalf of the Embassy off the United States of America, Bujumbura, Burundi."

Counsel further explained that in 2009, the applicant was transferred and promoted within the U.S. Embassy and she reapplied to preserve residence "even though the previously approved N-470 was still valid." Counsel contends that the supporting documentation submitted with this filing was the same as the documentation submitted in the previous filing and thus, believes that the current denial was made in error. Counsel further stated that the applicant maintained her ongoing residence in the United States.

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 or present in the United States for an uninterrupted period during the period including the departure. Therefore, as outlined by the chart of absences submitted by the applicant, and 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.

The applicant noted that USCIS approved an application to preserve residence that had been previously filed by the applicant. The director's decision does not indicate whether she reviewed the prior approval of the other application. If the previous application to preserve residence status was approved based on the same information contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, the AAO's authority over field offices is comparable to the relationship between a court of appeals and a district court. Even if a field office director had approved a previous application, the AAO would not be bound to follow the contradictory decision of a field office director. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.