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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: 

Office: SAN FRANCISCO, CA

Date: OCT 05 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:

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. 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 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 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 on behalf of a "public international organization of which the United States is a member."

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.

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 raised by the Field Office Director 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.

In the present matter, the applicant was lawfully admitted for permanent residence in the United States on May 9, 2005. According to the Form N-470, the applicant's first absence from the United States since his admission as a lawful permanent resident was on November 14, 2007 and his return was on December 16, 2007. However, in reviewing the applicant's passport pages, the applicant entered India on February 12, 2006 and departed India on March 15, 2006. On appeal, the applicant states that he has been present in the United States for 20 continuous months from March 15, 2006 until November 14, 2007. Upon review of the record, it indicates that the applicant was continuously physically present in the United States for the requisite one-year period after being lawfully admitted for permanent residence. The AAO will withdraw the director's decision since the applicant overcame the director's concern. However, the application must still be denied since the applicant has not submitted sufficient evidence to establish eligibility for the benefit sought.

The applicant filed the Form N-470 on September 14, 2009. The applicant marked E. in Part 2. of the form that states the reason for the applicants' absence from the United States is on behalf of a public international organization of which the United States is a member. In the supporting documents, the applicant stated that he will work as a Research Scientist in the [REDACTED] at the International Center for [REDACTED] in New Delhi, India. However, on appeal, in a letter dated February 5, 2010, the applicant stated the following reason for his absence from the United States:

In year 2009, I have voluntarily worked for a couple of months in the United Nation Organization's Research Center (ICGEB) in India, as well as surveyed the futuristic scope of biodiesel production in the US and other developing countries. Now I am working for the [REDACTED] which is an American Firm engaged in the development of foreign trade and commerce of the United States.

Thus, on appeal, the applicant states that he has a new job and will no longer work for the company that was stated in the initial application and supporting documentation. The applicant did not present evidence that his new employer is an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States. For purposes of section 316(b) of the Act, the nationality of a firm or corporation is determined through tracing the percentage of individual ownership interests in a firm or corporation, and by tracing the nationality of the persons having principal ownership

interests (more than 50 percent) in the firm or corporation. The Immigration and Naturalization Service Regional Commissioner stated in *Matter of Warrach*, 17 I&N Dec. 285, 286-87 (Reg. Comm. 1979), that:

[W]hen it is shown that 51 percent or more of the stock of the employer corporation is owned by a foreign firm, such firm is a "foreign corporation" within the meaning of section 316(b). The fact that a firm is incorporated under the laws of a state of the United States does not necessarily determine that it is an American firm or corporation. The nationality of such firm would be determined by the nationality of those persons who own more than 51 percent of the stock of that firm.

The petitioner did not present evidence to establish that his new employer qualifies as an American corporation based on its ownership. As the applicant has failed to meet his burden of proof in the present matter, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.