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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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FILE: [REDACTED] Office: HIALEAH FIELD OFFICE Date: FEB 02 2011

IN RE: Applicant: [REDACTED]

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 \$630. 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 Form N-470, Application to Preserve Residence for Naturalization Purposes (N-470 Application) was denied by the Field Office Director, Hialeah, Florida. 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 under 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 a "public international organization of which the United States is a member."

The field office director determined that the applicant did not establish eligibility under section 316(b) of the Act because he failed to establish that his employer, the International Civil Aviation Organization, which is headquartered in Mexico, is a public international organization of which the United States is a member. The district director noted that the applicant only submitted a tentative job offer to work with the [REDACTED] which was insufficient evidence to establish that the applicant was actually employed by this organization. In addition, 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.

On appeal, the applicant submits an employment verification letter from the [REDACTED] [REDACTED] stating that the applicant has been a staff member with the organization since November 2009. The applicant filed the Form N-470 on December 4, 2009, thus, he was employed by the [REDACTED] prior to filing this application. The applicant sufficiently evidenced that he is employed by the [REDACTED].

The first issue in this matter is whether the applicant has established that he is employed by a public international organization of which the United States is a member by treaty or statute.

The applicant claims that the [REDACTED] is a "public international organization" for purposes of section 316(b) of the Act because the United States is a signatory to the treaty creating the organization and because the employer is listed by the United Nations as an associated organization. As the United Nations and "all agencies and organizations which are a part thereof" are specifically listed as public international organizations in 8 C.F.R. § 316.20, the applicant asserts that his employment by the [REDACTED] qualifies him to preserve residence for naturalization purposes under section 316(b) of the Act.

The regulation at 8 C.F.R. §§ 316.20(b)-(c) describes what constitutes a "public international organization" for purposes of section 316(b) as follows:

(b) *Public international organizations of which the United States is a member by treaty or statute.* The following-listed organizations have been determined to be public international organizations of which the United States is a member by treaty or statute:

The North Atlantic Treaty Organization.  
United Nations and all agencies and organizations which are a part thereof.

(c) *International Organizations Immunities Act designations.* The following public international organizations are entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Immunities Act, and are considered as public international organizations of which the United States is a member by treaty or statute within the meaning of section 316(b) of the Act: . . . .

The regulation at 8 C.F.R. § 316.20(c) then lists 52 organizations, including the United Nations, along with a references to pertinent executive orders which each declare the corresponding organization to be a "public international organization." While the regulation separately lists organizations which are clearly associated with the United Nations, such as the United Nations Educational, Scientific, and Cultural Organizations (E.O. 9863, May 31, 1947), the regulation does not list the International Civil Aviation Organization.

As the regulation at 8 C.F.R. § 316.20(c) makes reference to the International Organizations Immunities Act ("IOIA") for purposes of identifying "public international organizations" under section 316(b) of the Act, it is noted that the IOIA defines "international organization" as follows:

[T]he term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter.

22 U.S.C.A. § 288.

It is further noted that an annotation to 22 U.S.C.A. § 288 lists 82 international organizations along with references to pertinent executive orders and the Federal Register. The annotation does list the International Civil Aviation Organization. Thus, the International Civil Aviation Organization is a "public international organization" for purposes of section 316(b) of the Act because (1) the employer is an organization of which the United States is a member by treaty or statute, and (2) the employer is an agency or organization which is a part of the United Nations. Accordingly, the AAO will withdraw this portion of the director's decision.

The second 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.

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.

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

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:

[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).

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

Section 316(a)(1) of the Act, 8 U.S.C. § 1427(a)(1), provides in pertinent part that:

No person . . . shall be naturalized, unless such applicant, (1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his application has been physically present therein for periods totaling at least half of that time[.]

In the present matter, the applicant became a lawful permanent resident on September 11, 2007. On appeal, counsel for the petitioner states that "it was impossible for [the beneficiary], not to travel and stay in the United States for an uninterrupted period of one year. In order to fulfill his responsibilities it was mandatory for him to travel to Latin American and sometimes to IATA headquarters in Switzerland and Canada."

As part of the supporting documentation, the applicant submitted a chart outlining his trips outside of the United States starting from October 15, 2007 until September 25, 2009. According to the applicant's chart of trips, he did not stay in the U.S. for one uninterrupted year since obtaining his permanent residence status.

As noted above, any departure from the United States for any reason or period of time, including business trips, 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 the applicant has failed to meet his burden of proof in the present matter, the appeal will therefore be dismissed, and the application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.