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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

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U.S. Citizenship
and Immigration
Services



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FILE: [REDACTED] Office: SAN FERNANDO, CALIFORNIA Date: JAN 07 2011
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.

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, 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 application to preserve residence for naturalization purposes was denied by the Field Office Director, San Fernando, 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 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:

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 or under contract with the Government of the United States or an American institution of research recognized as such by the Attorney General, or 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, as required by section 316(b) of the Act.

The applicant was lawfully admitted for permanent residence in the United States on December 16, 2009. The applicant filed the Form N-470 on January 14, 2010. On appeal, the applicant contends that she “submitted to the Service the Form N-470 with the required fee, in accordance with the form’s instructions. My employment with the U.S. government commenced on June 11, 1999, i.e. I filed the N-470 application after my employment commenced but before I have been absent from the United States for a continuous year.” The applicant cites to several paragraphs of the instructions for the Form N-470; however, the applicant does not appear to understand the requirements of the statute. While it is true the applicant filed the N-470 before she was absent from the United States for a continuous year, she is still required to demonstrate that she was physically present in the United States for an uninterrupted period of twelve months following admission as a permanent resident. In addition, the applicant cites to the N-470 instructions that state “a permanent resident employee of the U.S. government abroad who had filed a Form N-470 is considered physically present in the United States during such employment abroad.” This is assuming that the N-470 has been approved. The applicant did not receive an approved N-470. The instructions also state that “in most cases you must have been physically present and residing in the United States for an uninterrupted period, without any absences whatsoever, for at least one year after your admission as a lawful permanent resident before you can file Form N-470.

A lawful permanent resident who will be absent from the United States for more than one year due to qualifying employment who wants to preserve their residence for naturalization purposes must file Form N-470. Filing Form N-470 does not waive the requirement for a reentry permit or the naturalization law’s requirement of physical presence. The applicant must be physically present and residing in the United States for an uninterrupted period, without any absences, for at least one year after admission as a lawful permanent resident before the applicant can file Form N-470. An exception to this requirement, which does not apply to the applicant in this matter, is provided by section 316(c) of the Act, which states, in pertinent part:

In the case of a person employed by or under contract with [the] Central Intelligence Agency, the requirement in subsection (b) of an uninterrupted period of at least one year of physical presence in the United States may be complied with by such person at any time prior to filing an application for naturalization.

As noted above, the applicant obtained lawful permanent residence on December 16, 2009 and filed the Form N-470 29 days later. Therefore, as correctly noted by the field office 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 benefits of section 316(b) of the Act. 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." *Matter of Copeland*, 19 I&N Dec. 788, 789 (BIA 1988).

The burden of proof in these proceedings rests solely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

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