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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**

PUBLIC COPY



E,

DATE: **SEP 22 2011**

Office: CHICAGO, IL

FILE: 

IN RE: Applicant: 

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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). The applicant was admitted to the United States as a lawful permanent resident on April 23, 1999. He filed a Form N-470, Application to Preserve Residence for Naturalization Purposes, on March 17, 2008, stating that his absence from the United States was for the purpose of engaging in foreign trade or commerce of the United States on behalf of an American firm or corporation.

The field office director determined that the applicant was not eligible for benefits under section 316(b) of the Act because he had not been present in the United States for a continuous period of one year after being lawfully admitted for permanent residence. The application was denied accordingly.

On appeal, the applicant provided a brief history of his employment since adjusting to permanent residence status in 1999, and how his employment required him to travel abroad. The applicant also states that "Starting November 2006 I was employed by Citibank, it was only on March 2008 that I learned that working for a U.S. owned company abroad may count as non-interrupted continuity of residence." The applicant also stated that "in good faith I filed the Form N-470 as the law mentions that I must not have a continuous absence or more than one year outside United States."

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[.]

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 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 was lawfully admitted for permanent residence in the United States on April 23, 1999. The applicant states on appeal that he had not been physically present and residing in the United States for an uninterrupted period of one year and was not aware of this application process until March of 2008.

As 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.

The applicant has failed to establish that he was physically present and residing in the United States after being lawfully admitted for permanent residence for an uninterrupted period of at least one year as is required by section 316(b) of the Act. The applicant was admitted to the United States as a lawful permanent resident in April 1999. He was absent from the United States at different times for every year since his adjustment. Section 316(b) of the Act does not provide any exception to the requirement that the applicant establish an uninterrupted one-year period of physical presence and residence in the United States. The stated purpose of his absence, whether a property sale or employment interview, is therefore not a relevant consideration. Accordingly, the applicant does not qualify for benefits under section 316(b) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.