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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 2190  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



E,

Date: **AUG 02 2012**

Office: JACKSONVILLE, FL

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:

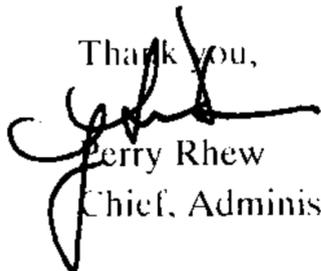
SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 was denied by the Field Office Director, Jacksonville, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will remain denied.

The applicant was admitted to the United States as a lawful permanent resident on March 12, 2008. Her son, [REDACTED] is a Staff Sergeant in the U.S. Air Force Special Operations Command and is stationed in the United Kingdom. The applicant's son seeks to preserve his mother's residence for naturalization purposes under section 316(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1427(b), claiming that she is the dependent of an individual employed by or under contract with the U.S. government.

The director determined that the applicant was not eligible for benefits under section 316(b) of the Act because she was not absent from the United States due to employment by or contract with the U.S. government. The application was denied accordingly.

On appeal, the applicant's son maintains that the applicant is his legal dependent and that he is completely responsible for her care. See Statement of the Applicant's Son on Form I-290B, Notice of Appeal to the AAO. The applicant's son claims that his mother must follow him to his duty station in the United Kingdom, where he is stationed for 36 months. *Id.*

In order to be naturalized as a United States citizen, the Act requires in part, that a person reside continuously in the United States as a lawful permanent resident for at least five years prior to filing an application for naturalization, and that the person be physically present in the United States for at least one half of the required residency period. See generally section 316 of the Act, 8 U.S.C. § 1427.

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 or under contract with the Government of the United States . . . , 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 [Secretary of Homeland Security] that his absence from the United States for such period is to be on behalf of such Government . . . ; and

(2) such person proves to the satisfaction of the [Secretary] that his absence from the United States for such period has been for such purpose.

Section 316(b) of the Act further provides that

*The spouse and dependent unmarried sons and daughters who are members of the household of a person who qualifies for the benefits of this subsection shall also be entitled to such benefits during the period for which they were residing abroad as dependent members of the household of the person.*

The record indicates that the applicant's son is employed by or under contract with the Government of the United States. The record also suggests that the applicant is her son's legal dependent. Nevertheless, the applicant herself is neither employed by nor under contract with the Government of the United States. Moreover, she is not the spouse or dependent unmarried son or daughter of an individual who qualifies for benefits under section 316(b) of the Act. As such, the applicant cannot establish her eligibility to preserve her residence for naturalization purposes under section 316(b) of the Act or any other provision of law.

The burden of proof is on the applicant to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed, and the application will remain denied.

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