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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**

[Redacted]

E,

Date: **JUL 17 2012**

Office: NEW YORK, NY

FILE: [Redacted]

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:

[Redacted]

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

admitted for permanent residence, 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 . . . engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries of such firm or corporation, or to be employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence; 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.

(Emphasis added).

The applicant cannot establish eligibility to preserve her residence for naturalization purposes under section 316(b) of the Act for two reasons. First, the applicant has not demonstrated that she has been continuously physically present in the United States for an uninterrupted period of at least one year after being lawfully admitted for permanent residence.

Under *Matter of Graves*, 19 I&N Dec. 337, 337-339 (Comm. 1985), "it is not possible to construe the uninterrupted physical presence requirement of section 316(b) to allow departures." Section 316(b) of the Act plainly requires uninterrupted and continuous physical presence. All departures are deemed to be interruptive:

[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 788 (Comm. 1988).

In fact, the applicant's response to question 2, part 3, of the Form N-470 confirms that she has not resided in, and been physically present in, the United States for an uninterrupted period of at least one year. Thus, the applicant cannot establish eligibility for benefits under section 316(b) of the Act where she cannot establish that she was present in the United States for an uninterrupted period of at least one year since becoming a lawful permanent resident.

Second, the applicant cannot establish eligibility to preserve her residence for naturalization purposes because section 316(b) of the Act only provides for such benefit where the applicant was not employed by the public international organization prior to his or her lawful admission for permanent residence. *See* section 316(b) of the Act.

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 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.