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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



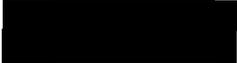
**U.S. Citizenship
and Immigration
Services**



E,

Date: **JUL 17 2012**

Office: NEW YORK, NY

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:



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 District Director, New York, New York. 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 February 26, 2003. She has been continuously employed by the United Nations since June 1999. Since her admission as a lawful permanent resident, the applicant has travelled outside the United States in conjunction with her employment as a peacekeeper by the United Nations. She seeks to preserve her 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 director determined that the applicant was not eligible for benefits under section 316(b) of the Act for two reasons. First, the director found that the applicant was not physically present in the United States for an uninterrupted period of at least one year after being lawfully admitted for permanent residence. Additionally, the director noted that the applicant's United Nations employment predated her admission as a lawful permanent resident. The application was denied accordingly.

On appeal, the applicant, through counsel, maintains that she has been employed by the United Nations Peacekeeping Operations since 1999 and that her employment requires frequent travel abroad for extensive periods of time. *See* Counsel's Appeal Letter dated March 2, 2012. The applicant claims that she is entitled to preserve her residence because she is employed as a peacekeeper by the United Nations. *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 . . . 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, *or is 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, 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.