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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 18 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 April 25, 2008. Since his admission as a lawful permanent resident, the applicant has travelled outside the United States in December 2008, May 2009, January 2010, and February 2010. His longest period of continuous, uninterrupted physical presence in the United States was eight months starting in May 2009 until January 2010. 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), as a lawful permanent resident who 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.

The director determined that the applicant was not eligible for benefits under section 316(b) of the Act because he failed to establish that he was continuously physically present and residing in the United States for the requisite uninterrupted one-year period after being lawfully admitted for permanent residence. The application was denied accordingly.

On appeal, the applicant, through counsel, maintains that he has been employed by the same American corporation since 1999 and that his absences from the United States were not interruptive of the continuous physical presence requirement in section 316(b) of the Act.

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).

At issue in this case is whether the applicant can establish that he 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.

In support of his application, the applicant submitted a list of his absences from the United States since he became a lawful permanent resident in 2008. This list confirms that the applicant has not been continuously physically present in the United States for one year since being admitted as a permanent resident. Although the applicant indicates in his response to question 2, part 3, of the Form N-470 that he has resided in, and been physically present in, the United States for an uninterrupted period of at least one year, his list of departures from the United States reflect that his longest period of physical presence in the United States amounts to eight months.

The applicant, through counsel, states that he was never absent from the United States for more than six months, that he remained an employee of an American corporation, that he retained access to his real property in the United States, and that he did not seek employment abroad. See Counsel's Letter Accompanying Appeal. The applicant and counsel appear to confuse the continuous residence requirement for naturalization with the uninterrupted one-year period of physical presence required to preserve residence for naturalization purposes.

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).

The applicant in this matter has not been continuously physically present in the United States for an uninterrupted period of at least one year after his admission as a lawful permanent resident in 2008. He is therefore statutorily ineligible for the benefit sought. As noted above, any departure from the United States, regardless of its duration or purpose, renders the applicant ineligible to preserve his residence for naturalization purposes under 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 remain denied.

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