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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **JUL 05 2013**

Office: LAS VEGAS, NV

FILE: [REDACTED]

IN RE: Respondent: [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 RESPONDENT:

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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director (the director), Las Vegas, Nevada. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a lawful permanent resident who 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 failing to establish that she was physically present in the United States for an uninterrupted period of one year after her admission as a lawful permanent resident and prior to her employment with the United Nations. The director also noted that the applicant had previously been employed by the United Nations, and that the applicant had not established that her previous employment with the United Nations ceased in December 2000 as she claimed. The application was denied accordingly.

On appeal, counsel reiterates that the applicant's employment with the United Nations commenced in October 2007. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. Although counsel indicates that a brief or additional evidence would be submitted within 30 days to the AAO, more than six months after the filing of the appeal, this office has not received any brief or additional evidence. The record will therefore be deemed complete and the appeal will be considered on the basis of the evidence currently before the AAO.

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 . . . 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 first issue in the present matter concerns whether the applicant is eligible for the benefit sought under section 316(b) of the Act even though she was previously employed by the United Nations before being admitted to the United States as a lawful permanent resident.

The AAO notes that the statutory language contained in section 316(b) of the Act specifically provides that an alien may not be employed by a public international organization prior to her lawful admission for permanent residence.

The evidence in the record demonstrates that the applicant entered into an employment contract with the United Nations High Commissioner for Refugees in October 2000. The applicant states that her contract terminated in December 2000. See Applicant's Affidavit at ¶6. The applicant further states that she was not employed again by the United Nations until October 2007. *Id.* at ¶ 9.¹ Section 316(b) of the Act requires that the applicant establish that she "was not employed [by the United Nations] until after being lawfully admitted for permanent residence." The AAO notes that the Act does not only preclude employment that is immediately prior to an applicant's admission as a lawful permanent resident. The plain language of the Act requires that employment with a public international organization commence after an applicant's admission as a lawful permanent resident. The record in this case clearly demonstrates that the applicant was first employed by the United Nations in October 2000, prior to her admission to the United States as a lawful permanent resident in March 2006. Thus, the applicant is ineligible to preserve her permanent residence for naturalization pursuant to section 316(b) of the Act.

The AAO finds that the applicant is also ineligible for benefits under section 316(b) of the Act because she cannot establish that she was continuously physically present in the United States for the requisite one-year period after being lawfully admitted for permanent residence. After her admission to the United States as a lawful permanent resident on March 23, 2006, the applicant

¹ The director correctly noted that there was no evidence in the record to corroborate the applicant's claim that she was not employed by the United Nations between December 2000 and October 2007.

was outside the United States several times, including between January 2007 and December 2008. The applicant was not physically present and residing in the United States for an uninterrupted period of one year after March 23, 2006 and before commencing her employment at the United Nations in October 2007.

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.

ORDER: The appeal is dismissed.