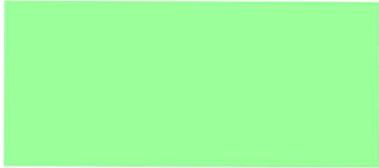


(b)(6)

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: PHOENIX, AZ

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:

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,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director (the director), Phoenix, Arizona. 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 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 her employment abroad with [REDACTED] commenced prior to her filing the Form N-470, Application to Preserve Residence for Naturalization Purposes. The application was denied accordingly.

On appeal, the applicant states that her employment abroad with [REDACTED] commenced on November 16, 2011, but was only temporary at first. See Appeal Statement. She states that her term of employment abroad at [REDACTED] was extended and she returned to the United States in May 2012 to file the instant application. *Id.* She maintains that her employment at [REDACTED] commenced after the filing of the instant application. *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 . . . , 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 record reflects that the applicant was admitted to the United States as a lawful permanent resident on August 4, 2010. She is an employee of [redacted] an American firm engaged in the development of foreign trade and commerce of the United States. *See* Affidavit of [redacted] Vice President and Assistant General Counsel, [redacted] On November 16, 2011, she was temporarily assigned to a project in India. Her employment with [redacted] abroad was extended for two additional years. *See* Employment Extension Certification dated July 16, 2012.

The record also reflects that the applicant was absent from the United States, after her admission as a lawful permanent resident in August 2010, once in May 2011 and from October 2011 to May 2012. The applicant therefore cannot establish that she was continuously physically present in the United States for the requisite uninterrupted one-year period after being lawfully admitted for permanent residence.

The AAO notes that the regulations allow for the filing of a Form N-470, Application to Preserve Residence for Naturalization Purposes, "either before or after the applicant's employment commences, but must be filed before the applicant has been absent from the United States for a continuous period of one year." *See* 8 C.F.R. § 316.5(d). The applicant had not been absent from the United States for a continuous period of one year prior to May 2012, when the instant application was filed. Nevertheless, the record demonstrates that the applicant was also not physically present in the United States for an uninterrupted period of one year after her admission as a lawful permanent resident before her employment abroad commenced. *See Matter of Graves*, 19 I&N Dec. 337, 337-339 (Comm. 1985) (holding that "it is not possible to construe the uninterrupted physical presence requirement of section 316(b) to allow departures"); *see also Matter of Copeland*, 19 I&N 788 (Comm. 1988) (holding that "any departure . . . for any reason or period of time bars a determination that an alien has been . . . present in the United

States for an uninterrupted period”). Thus, the applicant cannot establish that she is eligible to preserve her residency 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 her burden of proof in the present matter. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.