



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]
Date: DEC 04 2014 Office: NATIONAL BENEFITS CENTER 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(b)

ON BEHALF OF RESPONDENT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, National Benefits Center (the director), denied the Application to Preserve Residence for Naturalization Purposes (Form N-470). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will remain denied.

Pertinent Facts and Procedural History

The applicant is a lawful permanent resident employed by [REDACTED] who 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 or under contract with the United States government.

The director determined that the applicant was not eligible for consideration under section 316(b) of the Act because he could not establish that he was physically present in the United States for an uninterrupted period of one year following his admission as a permanent resident.

On appeal, the applicant maintains that his absence from the United States in 2009 was due to his mother's death, and in 2011 and 2012 due to his employment at [REDACTED], a United States [REDACTED] Africa. *See* Applicant's Appeal Statement. The applicant suggests that his presence at the [REDACTED] constitutes physical presence in the United States. *Id.*

Applicable Law

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 or under contract with the Government of the United States . . . 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 on behalf of such Government . . .; 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).

Analysis

We review these proceedings *de novo*. The applicant was admitted to the United States as a lawful permanent resident on March 20, 2008. He departed the United States, in relevant part, in December 2008, May 2009, December 2009, November 2010, May 2011, March 2012, and September 2013. On May 11, 2011, he began his employment with [REDACTED], a U.S. military contractor. On March 24, 2013, the applicant submitted his Form N-470, Application to Preserve Residence for Naturalization Purposes.

“[I]t is not possible to construe the uninterrupted physical presence requirement of section 316(b) to allow departures.” *Matter of Graves*, 19 I&N Dec. 337, 339 (Comm. 1985).

[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 Dec. 788, 789 (BIA 1988).

The applicant states that his presence in [REDACTED], a U.S. Naval Base, between May 2011 and June 2013, should be construed as physical presence in the United States. See Applicant’s Appeal Statement. Section 316(b) of the Act, however, requires physical presence in the United States. Cf. Section 301(g) of the Act, 8 U.S.C. § 1401(g) (specifically providing that periods of government service or military service abroad may be included to satisfy the physical presence requirement for transmission of U.S. citizenship). The definition of United States does not include military installations abroad. See Section 101(a)(38) of the Act, 8 U.S.C. § 1101(a)(38).

Therefore, the applicant has not been continuously physically present in the United States for the requisite one-year period after being lawfully admitted for permanent residence. As noted above, "any 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." *Matter of Copeland, supra*.

Conclusion

It is the applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 316.2(b). Here, that burden has not been met.

ORDER: The appeal is dismissed.