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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

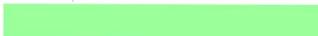


Date: **DEC 19 2014**

Office: DENVER, CO

FILE: 

IN RE:

Respondent: 

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 Field Office Director, Denver, Colorado (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 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 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 percent of whose stock is owned by an American firm or corporation.

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 lawful permanent resident. The application was denied accordingly.

On appeal, the applicant maintains that he was absent from the United States because his employment by [REDACTED] required that he remain abroad. *See* Appeal Statement. He explains that he has been employed by the same firm since 2007, and that he could not return to the United States because “he had to be [in Iran] to secure an investment at an American firm.” *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 . . . 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 . . . ; 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 permanent resident on March 14, 2007. He was absent from the United States, in relevant part, from April 6, 2007 to October 6, 2007; from October 23, 2007 to July 15, 2009; and from September 13, 2009 to July 9, 2011.

The applicant has been employed by [REDACTED] and, in August 2009, was assigned to manage the firm's branch in [REDACTED]. On September 11, 2009, the applicant submitted a Form N-470, Application to Preserve Residence for Naturalization Purposes.

The applicant was not physically present in the United States for at least one uninterrupted year after becoming a lawful permanent resident and being employed abroad. He became a lawful permanent resident of the United States in March 2007, and departed the United States the following month. The applicant has not been continuously present in the United States for one year after March 2007, and prior to commencing his employment abroad.

“[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).

Moreover, beyond the decision of the director, we note that the applicant has not established that he 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 fifty per cent of whose stock is owned by an American firm or corporation.<sup>1</sup>

A publicly held corporation may be deemed an “American firm or corporation” if the applicant establishes that the corporation is both incorporated and trades its stock exclusively on U.S. stock exchange markets. *See Matter of Chawathe*, 25 I&N Dec. 369, 372 (AAO 2010). If the applicant is unable to meet this qualification, then he or she must establish that more than fifty percent of the company’s stock is owned by U.S. citizens as required by *Matter of Warrach*, 17 I&N Dec. 285, 286 (Reg. Comm. 1979) (holding that a firm’s nationality is determined by reviewing whether more than fifty percent of its stock is owned by U.S. citizens, regardless of its place of incorporation).

The record does not contain corporate documents to demonstrate that [REDACTED] is an American firm or corporation. The 2013 employment letter submitted by the applicant states, in part, that the applicant “acquired part of [REDACTED] in 2012.” *See* Letter for [REDACTED]. The applicant’s prior employment letter, dated in 2009, indicated that he had been working for [REDACTED] in Iran since 2004. *See* Letter of [REDACTED]. The record suggests that [REDACTED] is a privately-held firm, but there is no evidence that the owners of [REDACTED] are American citizens. As such, the petitioner has failed to establish that [REDACTED] is an American firm or corporation.

*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.

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<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003).