



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: FEB 27 2014 Office: RALEIGH-DURHAM, NC

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.

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, Raleigh-Durham, North Carolina (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.

The director determined that the applicant was not eligible for consideration under section 316(b) of the Act because he failed to demonstrate that he was physically present in the United States for a continuous period of at least one year after being lawfully admitted for permanent residence in the United States. The application was denied accordingly.

On appeal, the applicant maintains that he was present in the United States for a continuous period of at least one year. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. The applicant submits additional bank statements covering the period from January 2008 to September 2008 and January 2009 to December 2009.

*Applicable Law*

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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*

The primary issue in the present matter is whether the applicant has established that he was physically present in the United States for an uninterrupted period of twelve months following his admission as a permanent resident.

The applicant was admitted to the United States as a permanent resident on December 24, 2006. He indicated on his Form N-470, filed on February 9, 2012, that he was absent from the United States from January 2010 to November 2010, from November 2010 to April 2011, from April 2011 to September 2011, and from September 2011 to February 2012.

The applicant is ineligible for the benefit he is seeking because he submitted no evidence that he had been physically present in the United States for at least one uninterrupted year since December 2006, the date he became a lawful permanent resident. The applicant submitted several bank statements covering the periods from January 2008 to September 2008, and from January 2009 to March 2012. Bank statements by themselves are not proof of the applicant's uninterrupted physical presence in the United States, particularly in light of the applicant's own admission that he was outside the United States for the majority of the period covered by the bank statements. Thus, the record does not demonstrate, by a preponderance of the evidence, that the applicant was physically present in the United States for an uninterrupted one-year period after December 24, 2006 as is required by section 316(b) of the Act in order to preserve his residence for naturalization purposes.

(b)(6)

Page 4

*NON-PRECEDENT DECISION*

*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.