



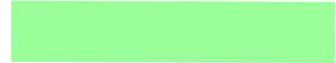
U.S. Citizenship
and Immigration
Services

(b)(6)

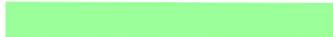


Date: **MAR 18 2014**

Office: KENDALL, FL



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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Kendall, Florida (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 The director's decision will be withdrawn. The matter will be remanded to the director for action consistent with this decision.

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 the Government of the United States.

The director determined that the applicant was not eligible for benefits under section 316(b) of the Act for failing to submit a copy of an affidavit establishing his employment abroad by the U.S. Government. The application was denied accordingly.

On appeal, the applicant maintains that he timely submitted the requested affidavit. See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. The appeal is accompanied by a copy of a document entitled "Affidavit Concerning the Employment of [REDACTED] executed by a human resources officer at the U.S. Embassy in Managua, Nicaragua.

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 . . . 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.

Analysis

The evidence in the record, including the "Affidavit Concerning the Employment of [REDACTED] demonstrates that the applicant has been employed by the U.S. diplomatic mission in Managua, Nicaragua since November 8, 2009. The record, however, does not contain sufficient evidence to establish that he was continuously present in the United States for the requisite one-year period after being lawfully admitted for permanent residence. The stamps in the applicant's passports and his sister's income tax returns do not establish that the applicant was physically present in the United States for an uninterrupted one-year period. The matter must therefore be remanded to the director to provide the applicant with an opportunity to submit evidence of his physical presence.

Conclusion

The matter will be remanded to the director to afford the applicant an opportunity to submit evidence of his physical presence in the United States for a continuous period of one year after being lawfully admitted for permanent residence. The director shall then issue a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

ORDER: The director's decision is withdrawn. The matter is remanded to the director for action consistent with this decision.