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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: NOV 24 2014

Office: DETROIT, MI

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:

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, Detroit, Michigan (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 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 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 her employment with [REDACTED] began prior to her admission as a lawful permanent resident. Additionally, the director found that [REDACTED] was owned by a foreign firm and therefore did not qualify as “an American firm or corporation.” The application was denied accordingly.

On appeal, the applicant, through counsel, maintains that her employment with [REDACTED] Inc. began one year after her admission to the United States as a lawful permanent resident. *See* Appeal Brief at 2. Moreover, the applicant states that she was present in the United States for a continuous period of at least one year prior as required. *Id.* Lastly, the applicant states that [REDACTED] is an American firm or corporation. *Id.* at 5. In this regard, the applicant submits the company’s corporate registration, tax and employment records, and bank and insurance documents.

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 November 10, 2009. She was absent from the United States, in relevant part, from November 22, 2009 to February 2, 2010; from March 10, 2010 until July 31, 2010; and from September 10, 2010 until October 28, 2010. On November 1, 2010, she began her employment with [REDACTED] a wholly owned subsidiary of [REDACTED]. See Affidavit of [REDACTED]. On November 15, 2011, the applicant submitted her Form N-470, Application to Preserve Residence for Naturalization Purposes, when her employment required her to travel abroad for two years. *Id.* at ¶ 3.

The applicant was physically present in the United States for at least one uninterrupted year after becoming a lawful permanent resident and being employed abroad. She became a lawful permanent resident of the United States in November 2009, became employed by [REDACTED] in November 2010, and her duties abroad commenced after November 2011. Thus, she was physically present in the United States for a continuous period of one year after being lawfully admitted for permanent residence and prior to her employment abroad. *Matter of Warrach*, 17 I&N Dec. 285, 286 (Reg. Comm. 1979). The director's decision in this regard is therefore withdrawn.

Nevertheless, the applicant is ineligible for benefits under section 316(b) of the Act because she cannot establish that she 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.

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 meet the requirements under *Matter of Warrach*, *supra*. U.S. Citizenship and Immigration Services (USCIS) then determines the nationality of the corporation by reviewing whether more than fifty percent of its stock is owned by U.S. citizens, regardless of its place of incorporation.

The record indicates, and the applicant does not dispute, that [REDACTED] is a wholly owned subsidiary of [REDACTED], a foreign corporation. The applicant has presented no evidence to demonstrate that [REDACTED] trades its stock exclusively on U.S. stock markets. Counsel maintains that [REDACTED] is an American firm or corporation because it is registered in both Ohio and Michigan, has a U.S. Employer Identification Number (EIN) and is paying U.S. taxes. Counsel, however, fails to consider [REDACTED] ownership; like the corporation at issue in *Matter of Warrach*, [REDACTED] is the American subsidiary of a foreign corporation. The Board of Immigration Appeals stated unequivocally in *Matter of Warrach* that the nationality of a firm or corporation is determined by the nationality of its owners, and not its place of incorporation or business. The applicant therefore cannot establish that her employment abroad is by an American firm or corporation, or subsidiary thereof.

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.