



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUN 09 2015**

A#: [Redacted]

IN RE: Applicant: [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 APPLICANT:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to 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, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

## I. FACTUAL AND PROCEDURAL HISTORY

The applicant 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). The applicant has been a lawful permanent resident since November 23, 2010. He filed a Form N-470, Application to Preserve Residence for Naturalization Purposes, on March 28, 2014, stating that his absence from the United States is on behalf of an American firm or corporation to protect the property rights outside the United States of that American firm or corporation engaged in the development of foreign trade and commerce of the United States.

The director determined that the applicant was not eligible for benefits under section 316(b) of the Act because he had not been present in the United States for a continuous period of one year after being lawfully admitted for permanent residence. The application was denied accordingly.

On appeal, the applicant explained that he left the United States after he obtained permanent residence for medical treatment for his cancer. In addition, the applicant explained that he never intended to abandon his residence.

## II. ELIGIBILITY TO PRESERVE RESIDENCE FOR NATURALIZATION PURPOSES

### A. The Law

Section 316(a)(1) of the Act, 8 U.S.C. § 1427(a)(1), provides in pertinent part that:

No person . . . shall be naturalized, unless such applicant, (1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his application has been physically present therein for periods totaling at least half of that time[.]

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 Attorney General [now Secretary, Homeland Security, "Secretary"] 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 is necessary to the protection of the property rights in such countries in such firm or corporation, . . . and

(2) such person proves to the satisfaction of the Attorney General [Secretary] that his absence from the United States for such period has been for such purpose.

Emphasis added). “[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).

#### B. Analysis

The 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 admission as a permanent resident.

In the present matter, the applicant was lawfully admitted for permanent residence in the United States on November 23, 2010. On the Form N-470, the applicant lists all his absences from the United States since his admission as a lawful permanent resident. According to the list of departures and arrivals provided by the applicant and reflected in United States Citizenship and Immigration Services records, the applicant had not been physically present and residing in the United States for an uninterrupted period of one year at the time of filing.

On appeal, the applicant explained that he was diagnosed with cancer and he was "regularly visiting India for my medical review, tests and getting treatments in India to ensure continuity as all my old treatment records were available in various hospitals in India." The applicant also stated that he received a reentry permit.

On the Form N-470, the applicant listed his time outside of the US and at no time was the applicant continuously present in the United States after obtaining permanent resident status and prior to filing the current application. As the record indicates, 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. Accordingly, the applicant is not eligible for the benefit sought. 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." *Id.* at 789.

The applicant was absent from the United States at different times for every year since he became a permanent resident. Section 316(b) of the Act does not provide any exception to the requirement that the applicant establish an uninterrupted one-year period of physical presence and residence in the United States prior to filing Form N-470. The stated purpose of the applicant's absence is therefore not a relevant consideration. Accordingly, the applicant does not qualify for benefits under section 316(b) of the Act, and the appeal will be dismissed.

### III. ADDITIONAL ISSUE

Upon review of the record, we will reserve the issue of whether the applicant's absence is on behalf of an American firm or corporation to protect the property rights outside the US of that American firm or corporation engaged in the development of foreign trade and commerce of the US.

### IV. CONCLUSION AND ORDER

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.<sup>1</sup>

**ORDER:** The appeal is dismissed.

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<sup>1</sup> As the identified grounds of ineligibility are dispositive of the petitioner's appeal, we need not address any additional issues in the record of proceeding