



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF H-K-A-

DATE: OCT. 16, 2015

APPEAL OF HONOLULU FIELD OFFICE DECISION

APPLICATION: FORM N-470, APPLICATION TO PRESERVE RESIDENCE FOR
NATURALIZATION PURPOSES

The Applicant 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). The Applicant has been a lawful permanent resident since December 9, 1992. She filed a Form N-470, Application to Preserve Residence for Naturalization Purposes, on September 28, 2012, stating that her absence from the United States was on behalf of the U.S. Government. The application was denied by the Field Office Director, Honolulu, Hawaii, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On January 21, 2015, the Honolulu field office denied the application because the applicant was out of the country for more than one year and the applicant did not file the Form N-470 prior to the one year absence.

**I. 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 or under contract with 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 Attorney General [now Secretary, Homeland Security, "Secretary"] 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 Attorney General [Secretary] that his absence from the United States for such period has been for such purpose.

8 C.F.R. § 316.5(d)(i) provides, in pertinent part that:

[A]n application for the residence benefits under section 316(b) of the Act to cover an absence from the United States for a continuous period of one year or more shall be submitted to the Service on Form N-470 with the required fee, in accordance with the form's instructions. The application may be filed either before or after the applicant's employment commences, but must be filed before the applicant has been absent from the United States for a continuous period of one year.

B. Analysis

The Applicant filed Form N-470, Application to Preserve Residence for Naturalization Purposes, on September 26, 2012. The Director denied the application concluding that the Applicant filed the application after the Applicant was absent from the United States for a continuous period of one year. The Director noted that the Applicant was absent from the United States from March 26, 2011 to April 24, 2012 and filed the Form N-470 on September 26, 2012. According to applicable status and regulations, the Form N-470 application must be filed before the applicant has been absent from the United States for a continuous period of one year. INA §316(b); 8 C.F.R. § 316.5(d)(i).

On appeal, the Applicant provides several support letters from her employer and colleagues, explaining that the Applicant was doing very important work abroad and due to extenuating circumstances was asked to continue working abroad for a time period that exceeded one year. Section 316(d)(i) of the Act does not provide any exception to the requirement that the Applicant file Form N-470 before she was absent from the United States for a continuous period of one year. The

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stated purpose of the Applicant's delay in filing the Form N-470 is therefore not a relevant consideration. Accordingly, the appeal will be dismissed.

II. 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.

ORDER: The appeal is dismissed.

Cite as *Matter of H-K-A-*, ID# 14017 (AAO Oct. 16, 2015)