



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF A-N-

DATE: OCT. 23, 2015

APPEAL OF NATIONAL BENEFITS CENTER DECISION

APPLICATION: 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 National Benefits Center Director denied the application. The Applicant has been a lawful permanent resident since February 17, 2012. She filed a Form N-470, Application to Preserve Residence for Naturalization Purposes, on December 12, 2014, stating that her absence from the United States is on behalf of an American firm or corporation, or a subsidiary thereof, to engage in the development of foreign trade and commerce of the United States. The matter is now before us on appeal. The appeal will be dismissed.

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 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 she 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 February 17, 2012. On the Form N-470, the applicant lists all her absences from the United States since her admission as a lawful permanent resident. According to the list of departures, the applicant has not been physically present and residing in the United States for an uninterrupted period of one year.

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On appeal, the applicant explained that she left the United States after she obtained permanent residence for very brief trips and "do not constitute a disruption of continuous residence." The applicant also stated that her current absence is "due to the job related functions." The applicant also stated that she was approved for a reentry permit.

On the Form N-470, the applicant listed her time outside of the US and at no time was the applicant present in the United States for an uninterrupted period of one year after obtaining permanent resident status and prior to filing the current application. As the record indicates, the applicant has not been 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 her adjustment of status to lawful 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. The stated purpose of her 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.

## 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.<sup>1</sup>

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-N-*, ID# 13962 (AAO Oct. 23, 2015)

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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