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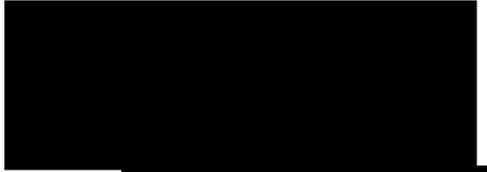
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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FILE: [REDACTED] Office: SAN FRANCISCO, CA

Date: DEC 01 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application to Preserve Residence for Naturalization Purposes under Section 317 of the Immigration and Nationality Act, 8 U.S.C. § 1428.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application to preserve residence for naturalization purposes was denied by the Field Office Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant seeks to preserve his residence for naturalization purposes pursuant to section 317 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1428, as a lawful permanent resident who is authorized to perform ministerial functions of a religious denomination having a bona fide organization within the United States, or as one engaged solely by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States as a missionary, brother, nun, or sister, and who will absent temporarily from the United States in this capacity.

The field office director determined that the applicant failed to establish that he is eligible for consideration under section 317 of the Act because he failed to submit requested evidence pertaining to the religious denomination in the United States. The application was denied on the record.

On appeal, the applicant submitted the requested evidence claiming that, due to individuals involved with the religious denomination in the United States being unavailable, he was unable to submit the documents in a timely manner.

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 317 of the Act, 8 U.S.C. § 1428, provides an exception to the continuous residence and physical presence requirements set forth in section 316 of the Act, and states that:

Any person who is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or any person who is engaged solely by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States as a missionary, brother, nun, or sister, who

(1) has been lawfully admitted to the United States for permanent residence,

(2) has at any time thereafter and before filing an application for naturalization been physically present and residing within the United States for an uninterrupted period of at least one year, and

(3) has heretofore been or may hereafter be absent temporarily from the United States in connection with or for the purpose of performing the ministerial or priestly functions of such religious denomination, or serving as a missionary, brother, nun, or sister, shall be considered as being physically present and residing in the United States for the purpose of naturalization within the meaning of section 316(a), notwithstanding any such absence from the United States, if he shall in all other respects comply with the requirements of the naturalization law. Such person shall prove to the satisfaction of the Attorney General that his absence from the United States has been solely for the purpose of performing the ministerial or priestly functions of such religious denomination, or of serving as a missionary, brother, nun, or sister.

In this matter, the applicant describes his foreign employer in the Form N-470 as follows:

Mission having bona fide [sic] to prepare cooking daily meals for the Vietnamese Temple in Frankfurt, Germany for another 3 years.

The applicant also submitted a letter dated February 28, 2008 from the German Buddhist organization claiming that it is a "sister organization" of "Buddhas Wisdom Org" in West Hartford, Connecticut, and that the applicant will devote 60% of his time abroad to "social support to the [V]ietnamese community" and 40% to "workload at the temple."

On May 5, 2008, the field office director requested additional evidence. The field office director requested a letter from the United States religious organization, articles of incorporation for the United States organization, and evidence that the Internal Revenue Service (IRS) has recognized the organization as a bona fide non-profit religious organization.

On August 20, 2008, the director denied the application on the record concluding that the applicant failed to establish eligibility for the benefit sought because he failed to submit the requested evidence pertaining to the religious denomination in the United States.

On appeal, the applicant submitted the requested letter, articles of incorporation, and IRS documentation. The letter from the United States organization dated June 19, 2008 indicates that it and the foreign temple in Germany are "sister organizations." The remaining documents indicate that the United States organization is a bona fide charitable entity committed to "cultivat[ing] the realization of Buddha's teaching."

Upon review, the applicant's assertions and additional evidence are not persuasive in establishing eligibility for the benefit sought.

Although the applicant submitted the requested evidence on appeal, the record nevertheless fails to establish: (1) that the applicant is "authorized" to perform ministerial or priestly functions or is "engaged solely" by a religious denomination or an interdenominational mission organization as a missionary, brother, nun, or sister; or (2) that the applicant's absences from the United States were or will be in connection with, or for the purpose of performing, the ministerial or priestly functions of such religious denomination, or as a missionary, brother, nun, or sister.

In this matter, the record is devoid of evidence that the applicant is authorized to perform any ministerial or priestly functions or is engaged solely as a missionary, brother, nun, or sister. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). To the contrary, it appears that the applicant is "cooking daily meals" at the temple in Germany and is not a priest, minister, missionary, or brother.

Likewise, the record is not persuasive in establishing that the applicant's absence is connected with performing ministerial, priestly, or brotherly functions of a religious denomination. To the contrary, it appears that 60% of the applicant's time will be devoted to activities completely unrelated to the Buddhist temple. The remaining time will be devoted to "workload" at the temple, which presumably refers to his cooking duties described in the Form N-470.

Accordingly, the applicant has failed to establish eligibility for the benefit sought, and the application may not be approved.

Beyond the decision of the director, the applicant has failed to establish that he has been continuously physically present in the United States for the requisite one-year period after being lawfully admitted for permanent residence.

In order to be eligible to preserve residence under Section 317 of the Act, the applicant must have been physically present and residing within the United States for an uninterrupted period of at least one year after his admission as a lawful permanent resident on March 11, 2005. However, in this matter, the applicant admits in the Form N-470 that he has not been physically present in the United States for a continuous one-year period. The applicant indicates that he departed the United States on March 30, 2005 and did not return until December 25, 2007. The instant application was filed on January 9, 2008.

Accordingly, as 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, the applicant is not eligible for the benefit sought, and the petition may not be approved for this additional reason.

It is noted that the burden of proof in these proceedings rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The appeal is dismissed.