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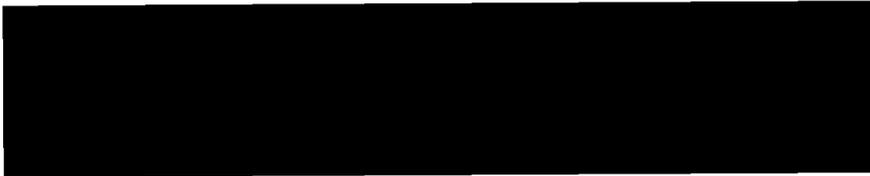
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



E1



FILE: A55 378 203 Office: CHARLOTTE FIELD OFFICE Date: FEB 23 2011

IN RE: Applicant: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form N-470, Application to Preserve Residence for Naturalization Purposes (N-470 Application) was denied by the District Director, Charlotte, North Carolina. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the N-470 application will be denied.

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) as a lawful permanent resident whose spouse is employed by a "public international organization of which the United States is a member by treaty or statute." As noted on the Form N-470, the applicant checked the box E. which states that the absence from the United States is on behalf of a public international organization of which the United States is a member.

The district director determined that the applicant did not establish eligibility under section 316(b) of the Act because she failed to submit any documents to establish that her previous or proposed absences from the United States were on behalf of a public international organization of which the United States is a member by treaty or statute.

On appeal, the applicant explained that she previously filed a Form N-470 and was denied because she failed to demonstrate that she was physically present and residing within the United States for an uninterrupted period of at least one year after being lawfully admitted for permanent residence in the United States. Although that application is not before the AAO on appeal, the AAO notes that the applicant has provided sufficient evidence to establish that she was physically present and residing within the United States for an uninterrupted period of at least one year after being lawfully admitted for permanent residence in the United States on February 27, 2003.

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 addresses the effect of absences during the required five-year period of continuous residence and 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 or an American institution of research recognized as such by the Attorney General, or 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, or is employed by a public international organization of which the United States is a member by treaty or statute . . . 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, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce . . ., or to be employed by a public international organization of which the United States is a member by treaty or statute . . . 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).

The primary issue in this matter is whether the applicant has established that this application, filed on March 26, 2010, was filed "prior to the beginning" of a period of her or her spouse's qualifying employment. The applicant requests that her or her spouse's periods of past foreign employment of various kinds not be considered as breaks in the continuity of her residence in the United States. For an N-470 application to be approved, the applicant has to demonstrate that she or her spouse are going abroad so that one or both of them can accept qualifying employment. The applicant checked block "E" on Form N-470, indicating that her absence from the United States would be on behalf of a public international organization of which the United States is a member. Here, the applicant states that her spouse works abroad as an international consultant "with various international agencies." In a letter dated June 17th, 2010, the applicant states that she is "leaving United States on the 28th June for [REDACTED] She further states that her "husband has departed for his overseas assignment." Without more specific information about the job(s) they were proposing to take abroad, the applicant has not established that either she or her husband was leaving the United States to be employed by a public international organization of which the United States is a member by treaty or statute.

The regulation at 8 C.F.R. §§ 316.20(b)-(c) describes what constitutes a "public international organization" for purposes of section 316(b) as follows:

(b) *Public international organizations of which the United States is a member by treaty or statute.* The following-listed organizations have been determined to be

public international organizations of which the United States is a member by treaty or statute:

The North Atlantic Treaty Organization.
United Nations and all agencies and organizations which are a part thereof.

(c) *International Organizations Immunities Act designations.* The following public international organizations are entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Immunities Act, and are considered as public international organizations of which the United States is a member by treaty or statute within the meaning of section 316(b) of the Act:

When she filed her first N-470 application on November 27, 2006, the applicant stated that when she left the United States on February 28, 2004, she commenced employment with [REDACTED] on July 1, 2004. She was employed abroad by [REDACTED] from July 1, 2004 until December 2005. For that employment to have been qualifying, the application would have had to have been filed before the beginning of the period of employment. [REDACTED] appears to qualify as "an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States" based on its ownership and the fact that its stock is traded on the New York Stock Exchange. *See* Matter of Chawathe, 25 I&N Dec. 369 (AAO 2010).

The regulation at 8 C.F.R. § 316.20(c) lists 52 organizations, including the United Nations, along with references to pertinent executive orders which each declare the corresponding organization to be a "public international organization." While the regulation separately lists organizations which are clearly associated with the United Nations, such as the United Nations Educational, Scientific, and Cultural Organizations (E.O. 9863, May 31, 1947), the regulation does not list [REDACTED]

As the regulation at 8 C.F.R. § 316.20(c) makes reference to the International Organizations Immunities Act ("IOIA") for purposes of identifying "public international organizations" under section 316(b) of the Act, it is noted that the IOIA defines "international organization" as follows:

[T]he term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter.

22 U.S.C.A. § 288.

It is further noted that an annotation to 22 U.S.C.A. § 288 lists 82 international organizations along with references to pertinent executive orders and the Federal Register. Once again, the annotation does not list KBR.

Upon review, the applicant's assertions are not persuasive in establishing that [REDACTED] is a "public international organization" for purposes of section 316(b) of the Act because (1) the employer is not an organization of which the United States is a member by treaty or statute, and (2) the employer is not an agency or organization which is a part of the United Nations. It must be noted that the regulation at 8 C.F.R. § 316.20(c) does not claim to be an exhaustive list of "public international organizations." However, the applicant did not provide any evidence to establish that KBR is a public international organization. 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)).

Furthermore, the applicant worked for [REDACTED] from July 2004 until December 2005; however, the applicant has been residing abroad beyond December 2005 but the applicant did not provide any evidence of employment at a public international organization. Accordingly, the director properly denied the applicant's first N-470 application. The current application was also properly denied, because the applicant did not specify any qualifying employment that she was going abroad to accept. The assertion that she is going to Delhi and her husband has departed for his overseas assignment falls far short of establishing eligibility.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of the evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

As the applicant has failed to meet her burden of proof in the present matter, the appeal will therefore be dismissed, and the application will remain denied.

ORDER: The appeal is dismissed.