



MEMORANDUM

TO: Permanent Residence Applicant
FROM: Seyfarth Shaw Business Immigration Group
RE: Preserving Residence for Naturalization Purposes

GENERAL:

To file a naturalization application, the applicant must have been a lawful permanent resident for a continuous period of at least five years, and must have remained physically present in the United States for at least 2.5 of those five years. A continuous absence from the United States of more than one year disrupts the required continuity of residence, with the result that the applicant would, upon return to the United States from such absence, have to reestablish the required five year period of residence (i.e. by waiting four years and one day from the date of return before filing the naturalization application).

There are certain exceptions to the rule that an absence of more than one year breaks the required continuity of residence. One of the exceptions is available to an employee who is sent abroad to work for an employer that is majority owned (ultimately) by a U.S. entity. The exception is available only if an application for the exception is filed **before** the expiration of the one year continuous absence from the United States through USCIS Form N-470.

ELIGIBILITY REQUIREMENTS:

To qualify for the exemption, the applicant must have established at least one year of uninterrupted, continuous physical presence in the United States as a permanent resident. An absence from the United States that is not "meaningfully interruptive" does not render the applicant ineligible to file for the exemption. Examples of absences that have been held not to be "meaningfully interruptive" include: two four-day business trips in connection with the contemplated foreign employment by the U.S. employer's foreign subsidiary (In re Peter Robert Cowan, A-14700651 (SFR, Oct. 13, 1971)); an eight day absence to Holland to visit a sick parent (In re Hegel, A-14378610 (NYC, Feb. 19, 1968)). Note that the one continuous year of physical presence does not need to immediately precede the contemplated trip abroad.

TIMING OF RETURN TRIP:

Assuming that the application to preserve residence is approved, the approval period will be coextensive with the period of employment with the foreign subsidiary. Note, however, that the applicant must still meet the 2.5 year physical presence requirement in order to file for naturalization. Thus, for example, if the overseas assignment actually lasts more than two and one half years, then the foreign national would not be eligible to file for naturalization upon his return until he had accumulated 2.5 years physical presence in the United States (even if the application for preservation of residence is approved). [If the application for preservation of

continuity of residence was not filed or was denied, then the applicant would have to wait four years and one day after return to the United States in order to file the naturalization application.]