

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

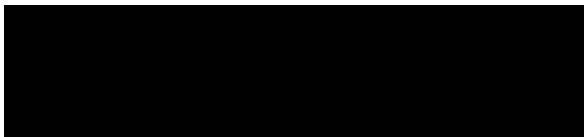
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

*EQ*



FILE:



OFFICE: TEXAS SERVICE CENTER

Date:

**DEC 30 2008**

IN RE:

Applicant:



APPLICATION:

Application for Replacement Naturalization/Citizenship Document under Section 338 of the Immigration and Nationality Act, 8 U.S.C. § 1449.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Liberia and a naturalized citizen of the United States. She seeks to have her Certificate of Naturalization corrected under section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, to reflect a change in her date of birth from January 6, 1983 to June 6, 1976.

The Director reviewed the applicant's record and determined that a correction to her Certificate of Naturalization was not justified. *Decision of the Director*, dated March 3, 2008. The application was denied accordingly.

On appeal, the applicant asserts that her Certificate of Naturalization contains an erroneous date of birth because she did not have a correct birth certificate prior to her naturalization. At part 3 of the Form I-290B, Notice of Appeal or Motion, she indicates that she did not have a correct birth certificate in time to present it during the naturalization process, and she also explains that she entered the United States as a refugee and was adopted by a U.S. couple "without the proper legal procedures and without caring to use [her] proper birth information." With the Form I-290B, the applicant submits a copy of a birth certificate issued by the Ministry of Health and Social Welfare, Republic of Liberia on February 15, 2006, which shows June 6, 1976 as her date of birth. The record reveals that the applicant's Form N-400, Application to File Petition for Naturalization, was filed on October 24, 2004, before the birth certificate upon which the applicant now relies was issued.

The AAO has reviewed all of the evidence submitted in support of the application. However, the evidence establishes that the date of birth entered by United States Citizenship and Immigration Services (USCIS) on the Certificate of Naturalization is the date of birth specified by the applicant in her Form N-400.

Section 338 of the Act provides the statutory authority relating to the contents of a Certificate of Naturalization. In addition, the specific regulations regarding the execution and issuance of Certificates of Naturalization are contained in 8 C.F.R. § 338.5, and provide, in part, that:

- (a) Whenever a Certificate of Naturalization has been delivered which does not conform to the facts shown on the application for naturalization, or a clerical error was made in preparing the certificate, an application for issuance of a corrected certificate, Form N-565, without fee, may be filed by the naturalized person.

....

- (e) The correction will not be deemed to be justified where the naturalized person later alleges that the name or date of birth which the applicant stated to be his or her correct name or date of birth at the time of naturalization was not in fact his or her own name or date of birth at the time of naturalization.

The applicant neither alleges nor establishes that clerical error by USCIS produced the birth date on her Certificate of Naturalization. The AAO also finds that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in her Form N-400. The AAO observes that the record also contains other immigration-related documents listing the applicant's date of birth as June 6, 1983, including Form G-325s, Biographic Information sheets; a Form I-94, Departure Record; a Supplemental Form to Form I-693, Adjustment of Status Applicant's Documentation of Immunization; and a Form I-485, Petition to Register Permanent Resident or Adjust Status. Accordingly, the Director correctly found that there are no provisions under 8 C.F.R. § 338.5 to justify or to allow for a USCIS correction to the applicant's Certificate of Naturalization.

Because the date of birth on the Certificate of Naturalization delivered to the applicant conforms to the date of birth shown on her application for naturalization, and because there was no clerical error in preparing the Certificate of Naturalization, USCIS has no statutory authority to make any corrections to that certificate, and only a federal court with jurisdiction over the applicant's naturalization proceedings has the authority to order that an amendment be made to the applicant's Certificate of Naturalization, after a hearing in which the Government is provided an opportunity to present its position on the matter. Such a hearing ensues pursuant to a motion to the court for an Order Amending a Certificate of Naturalization. *See* 8 C.F.R. § 334.16(b). *See also, Chan v. Immigration and Naturalization Service*, 426 F. Supp. 680 (1976) and *Varghai v. Immigration and Naturalization Service*, 932 F. Supp. 1245 (1996).

8 C.F.R. § 334.16(b) states in pertinent part that:

[W]henever an application is made to the court to amend a petition for naturalization after final action thereon has been taken by the court, a copy of the application shall be served upon the district director having administrative jurisdiction over the territory in which the court is located, in the manner and within the time provided by the rules of court in which the application is made. No objection shall be made to the amendment of a petition for naturalization after the petitioner for naturalization has been admitted to citizenship if the motion or application is to correct a clerical error arising from oversight or omission. A representative of the Service [USCIS] may appear at the hearing upon such application and be heard in favor of or in opposition thereto. When the court orders the petition amended, the clerk of court shall transmit a copy of the order to the district director for inclusion in the Service file.

Based on the reasoning set forth above, the appeal will be dismissed without prejudice to the applicant's submitting a request to a U.S. Federal Court in accordance with the Act and Regulations.

**ORDER:** The appeal is dismissed.