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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED]

Office: Cleveland

Date:

MAR 17 2001

IN RE: Applicant:

[REDACTED]

APPLICATION:

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

IN BEHALF OF APPLICANT:

[REDACTED]

**Public Copy**

**Identification data deleted to  
prevent clearly unwarranted  
invasion of personal privacy.**

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native of Pakistan and naturalized citizen of the United States. He seeks to have his original Certificate of Naturalization, which was issued to him on March 9, 1993, corrected under § 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1449, to reflect a change of his date of birth from April 4, 1946, to April 4, 1945.

The district director reviewed the applicant's record, determined that applicant's request was not justifiable and denied the application accordingly.

On appeal, counsel asserts that the applicant was admitted to the United States in 1968 as a nonimmigrant student. Counsel indicates that subsequent to his 1968 submission of documents to the Service, the applicant submitted an inaccurate affidavit prepared by his father showing his date of birth as April 4, 1946 and the applicant's wife inadvertently used that date in the preparation of subsequent documents. Counsel states that the Service knew the applicant's correct date of birth and committed a clerical error in approving the naturalization application and preparing the certificate of naturalization with the wrong birth date.

Section 343 of the Act, 8 U.S.C. 1454, provides the statutory authority regarding the replacement of a Certificate of Naturalization only if the original was lost, mutilated, or destroyed, or if the applicant's name is changed after naturalization by order of the court or by marriage. The regulations at 8 C.F.R. 343a.1, regarding the procedure and grounds for obtaining a replacement Certificate of Naturalization, are quite clear and are not discretionary.

Section 338 of the Act provides the statutory authority relating to the contents of a Certificate of Naturalization.

8 C.F.R. 338.5 contains the specific regulations regarding the execution and issuance of Certificates of Naturalization and provides, in part:

(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.

Documents contained in the applicant's record as early as July 31, 1974, reflect he indicated that his true date of birth was April 4, 1946. He continued to indicate under oath that his correct date of birth was April 4, 1946, on his Statement of Qualifications of Alien in October 1975, on his Occupational Preference Visa Petition in October 1975, on his Application for Adjustment of Status in September 1977, on his Biographic Information Sheet in July 1991, on his Application to File Petition for Naturalization in June 1991, and on his Petition for Naturalization in 1983.

The information on the applicant's Certificate of Naturalization in the record conforms to the facts on his application for that document and the certificate does not contain any clerical errors. The record clearly indicates that the application to file petition for naturalization was reviewed with the applicant under oath and there is no indication that he challenged the date of birth on that application or provided evidence at that time to have it changed. There are no provisions under §§ 338 or 343 of the Act to justify any corrections on the applicant's Certificate of Naturalization as requested using the present Form N-565 application.

8 C.F.R. 334.16(a) and (b) discuss the general procedures for amending a petition for naturalization during pendency of a petition or application and after final action on a petition or application. Whenever 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 on 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 the court in which application is made. When the court orders the petition amended, the clerk of the court shall transmit a copy of the order to the district director for inclusion in the Service file. See INTERP 334.1(l).

Upon receipt of such a court order, the Service should issue an amended certificate. O.I. 334.11 provides that a copy of any order granting the application shall be placed in the naturalized person's file with the duplicate certificate and the duplicate petition.

Although the applicant has provided documentation to support a request to have his date of birth amended on his Certificate of Naturalization, only the court has the authority to make this change. Therefore, the district director's decision will be affirmed, and the appeal will be dismissed.

This decision is without prejudice to the applicant's submitting his request to a U.S. Federal District Court with jurisdiction in this matter in accordance with regulations at 8 C.F.R. 334.16.

**ORDER:** The appeal is dismissed.