



U.S. Department of Justice  
Immigration and Naturalization Service

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



FILE:



Office: Denver

Date:

DEC 17 2002

IN RE: Applicant:



APPLICATION:

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

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision 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 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 that 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 that 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, Director  
Administrative Appeals Office

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

The applicant is a native of Eritrea and naturalized citizen of the United States. He seeks to have his original Certificate of Naturalization, which was issued to him on November 20, 1992, corrected under section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, to reflect a change of his date of birth from March 21, 1945, to March 21, 1938.

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

On appeal, the applicant states that he did not have his birth certificate with him on or before November 20, 1992, and he had no chance to bring the certificate with him because he was a refugee. The applicant submits a copy of his birth certificate to support his assertions.

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 September 25, 1982, reflect that he indicated that his true date of birth was March 21, 1945. He continued to indicate under oath that his correct date of birth was March 21, 1945 on his Application for Adjustment of Status in 1983 and on his Application for Naturalization in 1992.

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. There are no provisions under section 338 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 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.

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.