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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

FILE: [Redacted] Office: New York

Date: FEB 28 2003

IN RE: Applicant: [Redacted]

APPLICATION: Application for Replacement Naturalization/Citizenship Document
under Section 338 (343) of the Immigration and Nationality Act,
8 U.S.C. § 1449 (1454)

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

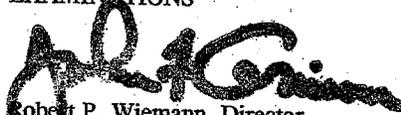
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 District Director, New York, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native of Greece and naturalized citizen of the United States. He seeks to obtain a new Certificate of Naturalization to replace the original one issued to him on March 16, 1976, to change the spelling of his surname.

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

On appeal, that applicant states that when he entered the United States for the first time his only identification was his seaman's book. The applicant states that, unfortunately, the translation of his name was incorrect. He submits a translation of his Greek identification card to support his assertion. He wants the letter "n" dropped from the spelling of his surname, changing it from [REDACTED]

Section 343(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1454, provides, in part, that if the name of any naturalized citizen has, subsequent to naturalization, been changed by order of any court of competent jurisdiction, or by marriage, the citizen may make application for a new certificate of naturalization in the new name of such citizen. If the Attorney General finds the name of the applicant to have been changed as claimed, the Attorney General shall issue to the applicant a new certificate and shall notify the naturalization court of such action.

The statute relating to changing one's name and applying for a Certificate of Naturalization is quite clear and is not discretionary.

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

Pursuant to 8 C.F.R. § 338.5, the specific regulations regarding the execution and issuance of Certificates of Naturalization are, in part, as follows:

(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 record reflects that he applied for and was issued an immigrant visa at the American Embassy in Athens, Greece, in January 1972 using the surname [REDACTED] based on documentation, including his birth certificate, in the Greek language. He spelled his surname [REDACTED] on his Application to File Petition for Naturalization in March 1975, and on his Petition for Naturalization filed in October 1975.

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 sections 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.

Pursuant to 8 C.F.R. § 334.16(a) and (b), 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 are as follows. 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(1).

Although the applicant has provided documentation to support a request to have the spelling of his name changed 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.