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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: SAN FRANCISCO, CA

Date:

AUG 05 2005

IN RE:

Applicant:

APPLICATION:

Application for Replacement Naturalization/Citizenship Document under Section 338
of the Immigration and Nationality Act, 8 U.S.C. § 1149.

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Venezuela 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 September 8, 1947 to September 8, 1939.

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

On appeal, the applicant asserts that her birth certificate previously contained an erroneous date of birth. The applicant asserts that she has officially corrected her Venezuelan birth certificate, and she requests that U.S. Citizenship and Immigration Services (CIS) correct her Certificate of Naturalization to reflect her September 9, 1939, birth date.

Section 338 of the Act provides the relevant 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 record reflects the applicant stated her birth date was September 8, 1947 for immigrant visa as well as immigration advance parole and travel document purposes. In addition, the record contains the applicant's original Venezuelan birth certificate and her Venezuelan passport, reflecting that the applicant's date of birth was September 8, 1947. The AAO notes that although the applicant stated on her October 2000, Application for Naturalization that her birth date was September 8, 1939, she did not obtain an official correction of her birth certificate until April 3, 2002. Moreover, the applicant's Certificate of Naturalization, signed by the applicant on August 16, 2001, also contains the birth date, September 8, 1947.

Based on the evidence contained in the record, the applicant has not established that his Certificate of Naturalization contains Immigration and Naturalization (Service, now, CIS) related clerical errors. The AAO therefore finds that the district director correctly found that there are no provisions under 8 C.F.R. § 338.5 to justify or to allow for a CIS correction to the applicant's Certificate of Naturalization.

Because there are no clerical errors in the present matter, CIS has no statutory authority to make any corrections to the applicant's certificate of citizenship, 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]henver 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 [CIS] 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.