U.S. Department of Homeland Security
20 Massachusetts Ave., NW, Room A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: CLEVELAND, OHIO Date: AUG 0 5 2005

IN RE: Applicant: [redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Cleveland, Ohio. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a native of Albania and a naturalized citizen of the United States. He seeks to have his 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 his date of birth from December 31, 1945 to May 10, 1941.

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

On appeal, the applicant asserts that recently obtained Albanian birth certificate, baptismal certificate, passport and court order documentation establish that his correct birth date is May 10, 1941, rather than December 31, 1945. The applicant subsequently requests that the birth date contained in his Certificate of Naturalization be corrected pursuant to section 338 of the Act.

8 C.F.R. § 103.3(a)(2)(i) states in pertinent part that, "[t]he affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision."

8 C.F.R. § 103.3(a)(2)(v)(B)(2) states in pertinent part that, "[a]n appeal which is not filed within the time allowed must be rejected as improperly filed."

The district director's decision also states clearly that the appeal of an unfavorable decision must be made to the AAO within 30 calendar days of the decision (33 days if the decision is mailed).

The district director's decision denying the application is dated August 11, 2004. The record reflects, however, that the applicant's Form I-290, Notice of Appeal was filed on September 17, 2004, after the 30 (33) days allowed for filing. The appeal must therefore be rejected as improperly filed.

ORDER: The appeal is rejected.