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

PUBLIC COPY

EM



FILE:



Office: PHILADELPHIA, PA

Date:

JUL 08 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant is a native of Egypt and a naturalized citizen of the United States. He seeks to have his Certificate of Naturalization corrected pursuant to section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, to reflect a change in his name from [REDACTED] to "Mohamed Saad Abd El-Samad".

The interim 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 he stated for immigration purposes, that his that his name was [REDACTED] because he had been informed by the Social Security Administration that his full name was too long. The applicant submits copies of his Egyptian passport and birth certificate and copies of his driver's license and corrected Social Security card containing his full name. The applicant asserts that the evidence submitted establishes that he is entitled to the amendment of his naturalization certificate pursuant to provisions contained in 8 C.F.R. § 334.16.

Section 338 of the Act provides the statutory authority relating to the contents of a Certificate of Naturalization. The specific regulations regarding the execution and issuance of Certificates of Naturalization are contained in 8 C.F.R. § 338.5, and provide, in pertinent 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.

Based on the evidence contained in the record, the applicant has not established that his Certificate of Naturalization contains an Immigration and Naturalization Service (Service, now, U.S. Citizenship and Immigration Service, CIS) related clerical error, and the AAO finds that that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in his application for that document. Accordingly, the interim district director correctly found that the provisions contained in 8 C.F.R. § 338.5 do not justify or allow for a CIS correction to the applicant's Certificate of Naturalization.

The AAO notes that because there is no clerical error in this case, 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 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 an amendment request to a U.S. Federal Court, in accordance with the regulations set forth in 8 C.F.R. § 334.16.

ORDER: The appeal is dismissed.