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**U.S. Citizenship
and Immigration
Services**

E3



FILE: [REDACTED] Office: LOS ANGELES, CA Date: **NOV 15 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.

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, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Vietnam 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 August 3, 1963 to August 3, 1959.

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 parents were unsure of her birth date when she immigrated to the United States, and she concedes that she used an erroneous birth date for U.S. immigration and naturalization purposes. The applicant asserts that she attempted to correct her erroneous date of birth prior to her naturalization as a U.S. citizen, but she was unable to because she did not have a correct birth certificate. The applicant asserts that she now has a correct birth certificate, and she requests that the birth date on her Certificate of Naturalization be changed accordingly.

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 Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 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 that the applicant stated her birth date was August 3, 1963 for all U.S. immigrant visa and naturalization purposes. Based on the evidence contained in the record, the applicant has not established that her Certificate of Naturalization contains Immigration and Naturalization Service (Service, now U.S. Citizenship and Immigration Services, CIS) related clerical errors. The AAO therefore finds that there are no provisions under 8 C.F.R. § 338.5 to justify or 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 corrections to the applicant's certificate of citizenship. 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]henever 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.

ORDER: The appeal is dismissed.