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U.S. Citizenship
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FILE:

OFFICE: CLEVELAND (COLUMBUS) OH

DATE:

IN RE:

JUN 09 2006

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:

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, Chief
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 dismissed.

The applicant is a native of Ethiopia 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 birth date from June 26, 1973, to June 26, 1978.

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

Counsel concedes on appeal that the applicant used a June 26, 1973 date of birth for U.S. immigration and naturalization purposes. Counsel asserts that the 1973 date of birth was the result of an Ethiopian government error, and counsel submits new birth certificate evidence containing a June 26, 1978 birth date for the applicant. Counsel asserts that the applicant attempted to correct the erroneous birth date during his U.S. naturalization interview, and counsel asserts that the immigration officer assured the applicant that his birth date could be corrected upon submission of an accurate birth certificate. On this basis, counsel requests that U.S. Citizenship and Immigration Services (CIS) correct the June 26, 1973, birth date on his naturalization certificate.

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.

Counsel concedes that the applicant stated his birth date was June 26, 1973 for all U.S. immigrant visa and naturalization purposes. Based on the evidence in the record, the applicant has not established that his Certificate of Naturalization contains Immigration and Naturalization Service (Service, now CIS) related clerical errors, and the AAO finds 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 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.

It is noted that because there are no clerical errors in the present matter, 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).¹

Based on the reasoning set forth above, the appeal will be dismissed.²

ORDER: The appeal is dismissed.

¹ 8 C.F.R. §334.16(b) states in pertinent part:

[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.

² The appeal is dismissed without prejudice to the applicant's submitting a new application upon compliance with the regulations as set forth in 8 C.F.R. § 334.16.