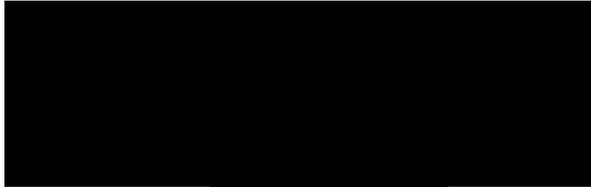




U.S. Citizenship
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Services

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FILE:



OFFICE: PHILADELPHIA, PA

Date: MAY 12 2006

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the 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 China and a naturalized citizen of the United States. She seeks to have her 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 her date of birth.

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

On appeal, the applicant asserts through her adoptive mother, that she was orphaned in China, and that her true birth date is unknown. The applicant indicates that although the Chinese police and orphanage documentation submitted, for immigration purposes, to U.S. Citizenship and Immigration Services (CIS) reflect that she was born on December 29, 1996, medical developmental evaluations reflect that she was born after that date. The applicant submits a November 21, 2001, Pennsylvania Court Adoption Decree amendment that amends her December 29, 1996 birth date to April 2, 1997. She additionally submits a State of Delaware, Certificate of Foreign Birth filed on April 16, 2003, which states that her birth date is April 2, 1997. On this basis, the applicant requests that the date of birth contained on her Certificate of Naturalization be changed from December 29, 1996 to April 2, 1997.

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.

The applicant's naturalization certificate, immigrant visa documentation, and Chinese birth certificate and orphan related documents reflect that her birth date is December 29, 1996. The record reflects that in August 1999, the applicant attempted to change her date of birth for naturalization purposes, based on a doctor's letter stating that developmentally the applicant's true date of birth was April 2, 1997. The record reflects that the applicant submitted no legal documents to support the request to change her date of birth, and the record reflects that CIS did not change the applicant's date of birth.

Based on the evidence contained in the record, the AAO finds that the applicant has not established that her Certificate of Naturalization contains Immigration and Naturalization Service (Service, now CIS) related

clerical errors. Accordingly, the AAO finds 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 finds further that 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. It is noted, however, that per the district director's October 13, 2005 decision, the applicant would be ineligible for immigrant visa classification as an "orphan" if her birth date is legally changed to April 2, 1997.