



U.S. Citizenship
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Services

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JUL 12 2007

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:

IN RE: [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:



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 Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The applicant is a native of Peru 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 May 21, 1947 to May 21, 1941.

The director determined that the applicant's request was not justifiable under 8 C.F.R. § 338.5. The application was denied accordingly.

The applicant asserts on appeal, through counsel, that the documentation he used for U.S. immigrant visa and naturalization purposes contained an erroneous birth date, and that his true date of birth is May 21, 1941 rather than May 21, 1947. To corroborate his assertions, the applicant submits a June 15, 2005, *Rectification of Birth Certificate* form a court in Peru, changing his date of birth to May 21, 1941. The applicant additionally submits a copy of his Peruvian passport, driver's license and voter registration card, issued after the Peruvian court judgment changing his birthdate, and reflecting that the applicant's birth date is May 21, 1941. The applicant requests that U.S. Citizenship and Immigration Services (CIS) correct the birth date on his certificate of naturalization.¹

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.

A review of the applicant's record reflects he stated that his birth date was May 21, 1947 for all U.S. immigrant visa and naturalization purposes. The applicant's, *Application for Alien Employment Certification*,

¹ The present Form I-290B, Notice of Appeal to the AAO (Form I-290B) appeals the director of the California Service Center's March 24, 2006, denial decision. It is noted that the record also contains a previously filed Form N-565, Application for Replacement Naturalization/Citizenship Document (Form N-565) and denial decision dated May 4, 2001. The applicant filed a Form I-290B appealing his May 4, 2001, denial decision on May 17, 2001. It appears, however, that the applicant's May 2001 appeal was never forwarded to the AAO. The AAO has reviewed the previous appeal, and notes that it is identical to the claim stated in the current appeal. The present AAO decision will therefore cover both of the appeals filed by the applicant.

Statement of Qualifications of Alien, Immigrant Visa and Alien Registration, Application to File Petition for Naturalization, and Petition for Naturalization all state that the applicant's date of birth is May 21, 1947. Moreover, the record contains the Peruvian birth certificate submitted by the applicant for immigrant visa and naturalization purposes, reflecting that the applicant was born on May 21, 1947. Based on the evidence in the record, the applicant has therefore 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).²

Based on the reasoning set forth above, the appeal will be dismissed, and the application will be denied.³

ORDER: The appeal is dismissed and the application is denied.

² 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.

³ 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.