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U.S. Citizenship
and Immigration
Services

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JUL 27 2007

FILE:

[REDACTED]

OFFICE: SAN FRANCISCO, CA

Date:

IN RE:

APPLICANT:

[REDACTED]

APPLICATION: Application for Replacement Naturalization/Citizenship Document under Sections 338 and 343 of the Immigration and Nationality Act, 8 U.S.C. §§ 1449 and 1454.

ON BEHALF OF APPLICANT:

[REDACTED]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California. 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 China and a naturalized citizen of the United States. She seeks to have her Certificate of Naturalization corrected pursuant to sections 338 and 343 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1449 and 1454, to reflect a change in her name and date of birth.

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

On appeal the applicant asserts, through counsel, that she mistakenly provided an erroneous date of birth at the time she applied for U.S. immigrant status. The applicant indicates that the evidence in the record establishes her correct date of birth, and she requests that her certificate of naturalization be corrected to reflect that her date of birth is October 24, 1949 rather than October 24, 1956. Counsel for the applicant does not address the denial of the applicant's request to change her name from her married name, [REDACTED], to her maiden name, [REDACTED].

Section 343(c) of the Act provides that:

[I]f the name of any naturalized citizen has, subsequent to naturalization, been changed by order of any court of competent jurisdiction, or by marriage, the citizen may make application for a new certificate of naturalization in the new name of such citizen. If the Attorney General [now, Secretary, U.S. Department of Homeland Security ("Secretary")] finds the name of the applicant to have been changed as claimed, the Attorney General [Secretary] shall issue to the applicant a new certificate and shall notify the naturalization court of such action.

The regulation provides in pertinent part at 8 C.F.R. § 343a.1(b):

[A] naturalized citizen whose name has been changed after naturalization by order of court or by marriage shall apply on Form N - 565 for a new certificate of naturalization, or of citizenship, in the changed name.

The applicant does not address or dispute the district director's finding that she failed to establish her request to change her name from [REDACTED] to [REDACTED] was supported by a court ordered name change, or by a legal marriage certificate reflecting the applicant's desired last name. A review of the applicant's record reflects that [REDACTED] is the applicant's maiden name. The applicant was married at the time that she applied for U.S. immigrant and citizenship status, and the applicant stated that her name was [REDACTED] for all U.S. immigrant visa and naturalization purposes. Upon review of the record, the AAO agrees that the record contains no court order or marriage certificate evidence to justify the applicant's name change request under sections 338 or 343 of the Act. Accordingly, the applicant failed to demonstrate that her name change request is justified. The request will therefore be denied.

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 record reflects that the applicant stated that her date of birth was October 24, 1956, for all U.S. immigrant visa and naturalization purposes. The applicant has therefore not established that her 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 her application for that document. Accordingly, the provisions contained in 8 C.F.R. § 338.5 do not justify or allow for a CIS date of birth 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 a date of birth 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

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

[W]hensoever 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, and the application will be denied.²

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

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.