

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



E3

FILE: [REDACTED] OFFICE: CHICAGO, IL DATE: NOV 27 2007

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois. 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 Eritrea 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 January 1, 1953, to January 1, 1945.

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

On appeal, the applicant asserts that Eritrean baptismal and legal documentation establish that his true date of birth is January 1, 1945, rather than January 1, 1953. On this basis, the applicant requests that U.S. Citizenship and Immigration Services (CIS) correct the birth date on his certificate of naturalization.

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 that he stated his date of birth was January 1, 1953, on all documentation related to his refugee and adjustment of status processing. In 1998 he submitted a statement indicating that his date of birth was October 22, 1950. That claim was not accepted. Though he initially claimed 1945 as his year of birth on his N-400 application, he was unable to confirm that date and his certificate was issued with the date of birth he had used for his prior applications. The applicant has therefore not established that his certificate of naturalization contains Immigration and Naturalization Service (Service, now CIS) related clerical errors. 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, and the application will be denied.²

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

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.