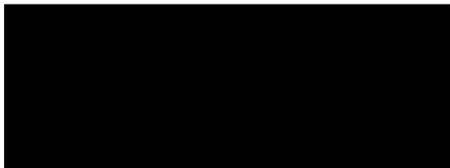




U.S. Citizenship
and Immigration
Services

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**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



ES

FILE:



Office: TEXAS SERVICE CENTER

Date:

APR 23 2008

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.

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 Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of Vietnam and a naturalized citizen of the United States. He seeks to have his Certificate of Naturalization corrected under section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, to reflect a change in his date of birth from April 12, 1982 to April 12, 1984.

The Director reviewed the applicant's record and determined that a correction of his Certificate of Naturalization was not justified. The application was denied accordingly.

On appeal, the applicant asserts that his Certificate of Naturalization contains an erroneous date of birth. The applicant submits a birth certificate, a social security card, a driver's license, and an American Council for Voluntary International Action Form which list his date of birth as April 12, 1984. The AAO notes that the record also includes a Form N-600, Application for Certificate of Citizenship; a Form I-181, Memorandum of Creation of Record of Lawful Permanent Residence; a Form I-94; a Form I-590, Registration for Classification as Refugee; and an Optional Form 157, Medical Examination of Applicants for United States Visas listing the applicant's date of birth as April 12, 1984.

Section 338 of the Act provides the statutory authority relating to the contents of a Certificate of Naturalization. In addition, the specific regulations regarding the execution and issuance of Certificates of Naturalization are contained in 8 C.F.R. § 338.5, and provide, in 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.

Based on the evidence contained in the record, the applicant has established that his Certificate of Naturalization contains Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) related clerical errors, and the AAO finds that the information on the applicant's Certificate of Naturalization does not conform to the facts as set forth in his application for that document, as his Form N-600 lists his date of birth as April 12, 1984. The AAO also notes that there are no documents in the record, with the exception of his certificate of naturalization, listing the applicant's date of birth as April 12, 1982. Accordingly, the District Director erred in finding that there are no provisions under 8 C.F.R. § 338.5 to justify or to allow for a CIS correction to the applicant's Certificate of Naturalization.

Because there are clerical errors in the present matter, CIS has the statutory authority to make corrections to the applicant's certificate of citizenship.

Based on the reasoning set forth above, the appeal will be sustained and the case remanded to the Texas Service Center to issue the applicant a new certificate of naturalization with his correct April 12, 1984 date of birth.

ORDER: The appeal is sustained and the case remanded to the Texas Service Center to issue the applicant a new certificate of naturalization with his correct April 12, 1984 date of birth.