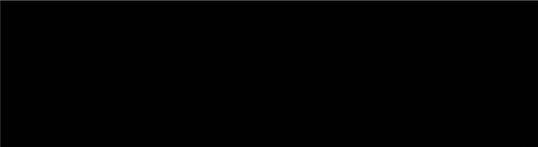


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**U.S. Citizenship
and Immigration
Services**

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



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FILE:

Office: TEXAS SERVICE CENTER

Date: **FEB 06 2009**

IN RE:

Applicant:



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

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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 dismissed.

The applicant is a native of Ethiopia (the present Eritrea) 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 July 7, 1962 to July 7, 1969.

The Director reviewed the record and determined that a correction to the applicant's Certificate of Naturalization was not justified. *Decision of the Director*, dated March 10, 2008. The application was denied accordingly.

On appeal, the applicant asserts that his Certificate of Naturalization contains an erroneous date of birth. Along with a Form I-290B, Notice of Appeal or Motion, he submits these documents to explain why the July 7, 1962 birth date entered on his Certificate of Naturalization is erroneous and should be replaced by July 7, 1969: (1) his letter to the Texas Service Center dated April 7, 2008; (2) a copy of school records; (3) a copy of his birth certificate that indicates his date of birth is "30/10/61" by the Ethiopian calendar, and is "07/07/1969" by the standard, Gregorian calendar used in the United States and Europe; and (4) copies of his mother's birth certificate and passport, which indicate that she was born in 1949. As in his December 27, 2007 letter to the Texas Service Center that he submitted with the Form N-565, the applicant explains that the clerk who prepared the birth certificate that he possessed when applying for his Certificate of Naturalization incorrectly calculated the Western calendar equivalent of his Ethiopian birth date.

The AAO has reviewed all of the evidence submitted in support of the application; and the AAO acknowledges its evidentiary bearing on the issue of the applicant's true date of birth. However, the evidence establishes that the date of birth U.S. Citizenship and Immigration Services (USCIS) entered on the Certificate of Naturalization is the date of birth that the applicant specified in his Form N-400, and that, at the time he submitted the Form N-400, the only birth certificate that he possessed was the one showing July 7, 1962 as his date of birth. On these facts, the appeal must be dismissed.

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.

The applicant neither alleges nor establishes that clerical error by Immigration and Naturalization Service (now USCIS) produced the birth date on his Certificate of Naturalization. The AAO also finds that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in his Form N-400. The AAO observes that the record also contains other immigration-related documents listing the applicant's date of birth as July 7, 1962, including the Form I-130, Petition for Alien Relative; a Form G-325, Biographic Information sheet; and a Form I-90, Application by Lawful Permanent Resident for New Alien Registration Receipt Card. Accordingly, the Director correctly found that there are no provisions under 8 C.F.R. § 338.5 to justify or to allow for a USCIS correction to the applicant's Certificate of Naturalization.

Because the date of birth on the Certificate of Naturalization delivered to the applicant conforms to the date of birth shown on his application for naturalization, and because there was no clerical error in preparing the Certificate of Naturalization, USCIS has no statutory authority to make any corrections to that certificate, and 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).

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

[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 [USCIS] 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 without prejudice to the applicant's submitting a request to a U.S. Federal Court in accordance with the Act and Regulations.

ORDER: The appeal is dismissed.