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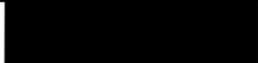
U.S. Citizenship  
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FILE:



Office: LAS VEGAS, NV

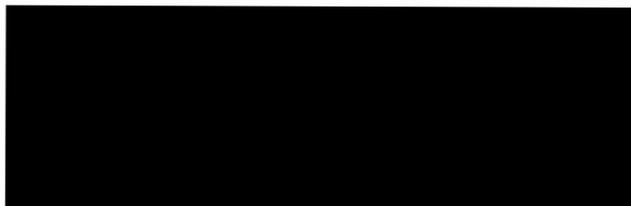
Date: JAN - 2 2009

IN RE:



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:



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 "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Las Vegas, Nevada. The matter is now before the Administrative Appeals Office (AAO) on appeal. The field office director's decision will be withdrawn and the matter remanded to the field office director for action consistent with this decision.

The applicant is a native of Ethiopia and a naturalized citizen of the United States. He seeks to have his Certificate of Naturalization issued under section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, corrected in order to reflect a change of his date of birth from January 1, 1964 to January 1, 1949.

The field office director determined that a correction of the applicant's date of birth on his Certificate of Naturalization was not justified and the application was denied accordingly. *Decision of the Field Office Director*, at 2, dated January 31, 2008.

On appeal, counsel asserts that the original N-400 application clearly lists the applicant's birth date as January 1, 1949, his baptismal certificate reflects this date and he obtained a court order that orders the correction of his birth date. *Form I-290B*, received February 29, 2008.

Section 338 of the Act provides the statutory authority related to the contents of a Certificate of Naturalization. In addition, the specific regulations regarding the correction of Certificates of Naturalization are located at 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's Form N-400, Application for Naturalization, lists the applicant's date of birth as January 1, 1949. *Applicant's Form N-400*, at 2, approved July 11, 2005. The applicant's Certificate of Naturalization lists his date of birth as January 1, 1964. *Applicant's Certificate of Naturalization*, dated July 29, 2005. Based on the evidence contained in the record, the applicant has established that his Certificate of Naturalization contains an Immigration and Naturalization Service (now United States Citizenship and Immigration Services (USCIS)) related clerical error. The AAO finds that the information on the applicant's Certificate of Naturalization does not conform to the facts as set forth in his Form N-400. Accordingly, the field office director incorrectly found that there are no provisions under 8 C.F.R. § 338.5 to justify or to allow for a USCIS correction of the applicant's

date of birth on his Certificate of Naturalization. The regulation at 8 C.F.R. § 338.5(a) permits this change.

As such, the field office director must amend the applicant's Certificate of Naturalization to reflect January 1, 1949 as the applicant's date of birth.

**ORDER:** The field office director's decision is withdrawn and the matter is remanded to the field office director for action consistent with this decision.