

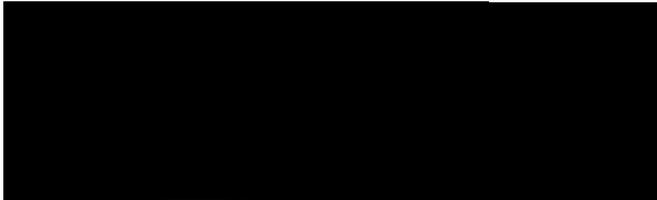
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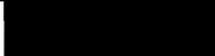
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

JAN - 2 2009
Date:

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 Korea and a naturalized citizen of the United States. She seeks to have her Certificate of Naturalization corrected under section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, to show her date of birth as October 25, 1945 instead of December 25, 1945.

At part 5 of her Form N-565, Application for Replacement [of] Naturalization/Citizenship Document, the applicant explains that her Certification of Naturalization bears an incorrect date of birth because of her reliance on an incorrect 1974 translation of the Korean Family Census Register where the birth is recorded. In support of the Form N-565, the applicant submitted a new translation that indicates that the Register actually records her birth as October 25, 1945, not December 25, 1945 as indicated on her Form N-400, Application to File Petition for Naturalization.

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

On appeal, the applicant submits the following additional documentation: (1) a two-page "Attachment to Form I-290B"; (2) a copy of the English translation of the Korean Family Census Register upon which the applicant says she relied when completing her Form N-400; and (3) a copy of that register, which the applicant states is in Chinese and is unreadable by her as she is not educated in that language.

In her statements in the Form N-565 and on appeal, the applicant asserts that her Form N-565 application should be approved because she was mistaken when she entered December 25, 1945 as her date of birth on her Form N-400. She asserts that she used December 25, 1945 as her date of birth because of her mistaken, but good-faith, reliance on the accuracy of a 1974 Chinese-to-English translation of her birth record.

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 record establishes that the date of birth that United States Citizenship and Immigration Services (USCIS) entered on the Certificate of Naturalization is the date of birth that the applicant specified in her Form N-400. 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 her Certificate of Naturalization. The AAO also finds that that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in her application for that document.

Because the date of birth on the Certificate of Naturalization delivered to the applicant conforms to the date of birth shown on her 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.