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U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date **MAY 29 2009**

IN RE:



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:



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.

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 sustained.

The applicant is a native of Brazil 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 reflect a change in her date of birth from June 14, 1944 to June 14, 1947.

The Director reviewed the applicant's record and determined that a correction to her Certificate of Naturalization was not justified. In his decision, the Director noted that the applicant had claimed the date of birth on the certificate at the time of naturalization. The application was denied accordingly.

On appeal, counsel asserts that the Certificate of Naturalization for the applicant contains an erroneous date of birth and that the applicant claimed the June 14, 1947 date of birth entered on her application for naturalization at the time of her naturalization interview. In support of this assertion, he submits a brief; a copy of an unsigned Form N-400, Application for Naturalization; a copy of the applicant's Brazilian birth certificate with certified translation, a copy of the applicant's driver's license; a copy of the applicant's Brazilian passport with a temporary Form I-551 stamp; statements from the applicant; and a copy of the applicant's cancelled Brazilian passport indicating that the applicant's date of birth is June 14, 1947.

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 her Certificate of Naturalization contains Immigration and Naturalization Service (now United States Citizenship and Immigration Services (USCIS)) related clerical errors. The AAO finds that the applicant entered the June 14, 1997 date of birth on her Form N-400 and that her date of birth was not among the

amendments/corrections made to her Form N-400 at the time of her interview. Accordingly, the Director erred in finding 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 there are clerical errors in the present matter, USCIS has the statutory authority to make corrections to the applicant's certificate of naturalization.

Based on the reasoning set forth above, the appeal will be sustained and the case remanded to the Nebraska Service Center to issue the applicant a new certificate of naturalization with her correct June 14, 1947 date of birth.

**ORDER:** The appeal is sustained and the case remanded to the Nebraska Service Center to issue the applicant a new certificate of naturalization with her correct June 14, 1947 date of birth.