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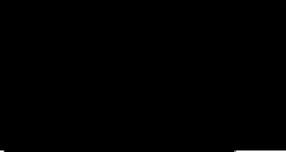
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

E<sub>3</sub>

FILE:



Office: NEBRASKA SERVICE CENTER

Date: APR 30 2010

LIN1000350956

IN RE:



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

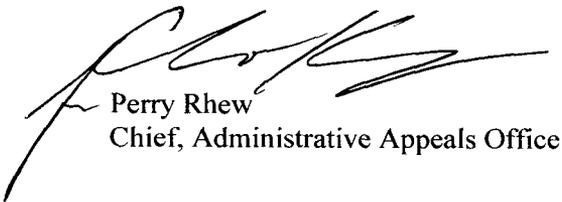
ON BEHALF OF APPLICANT:

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
Perry Rhew  
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 Vietnam 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 December 31, 1975 to March 19, 1971.

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, the applicant asserts that her Certificate of Naturalization contains an erroneous date of birth. In support of this assertion, she submits copies of a birth certificate, an Order from the Superior Court of California, County of Santa Clara, and other documents, indicating her date of birth as March 19, 1971.

Section 338 of the Act provides the statutory authority relating to the contents of a Certificate of Naturalization. In addition, the 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 name or date of birth at the time of the naturalization.

Based on the evidence contained in the record, the applicant has not established that her Certificate of Naturalization contains clerical errors attributable to U.S. Citizenship and Immigration Services (USCIS).. The date of birth on the applicant's Certificate of Naturalization conforms to the date of birth stated in her Form N-400, Application for Naturalization. Additionally, the record contains other immigration documents with the December 31, 1975 date of birth, including the Form I-590 Registration for Classification as Refugee, and the applicant's Alien Registration Receipt Card.

The AAO acknowledges that the record includes a birth certificate; a state court order; a driver's license; and a health plan card showing the applicant's date of birth to be March 19, 1971. However,

because the applicant stated her birth date as December 31, 1975 at the time of her naturalization and there has been no clerical error in the present matter, USCIS has no authority to change the applicant's Certificate of Naturalization. *See* 8 C.F.R. § 338.5(a), (e).

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. 8 C.F.R. § 334.16(b). *See e.g. Hussain v. USCIS*, 541 F.Supp. 2d 1082, 1084-87 (D.Minn. 2008) (explaining the applicable procedural requirements and standard of proof).

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

Whenever 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 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.

Accordingly, the appeal will be dismissed without prejudice to the filing of an appropriate action before the U.S. district court with jurisdiction over the applicant's naturalization proceedings.

**ORDER:** The appeal is dismissed.