

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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**

E3

FILE: [REDACTED]
LIN 10 087 50776

Office: NEBRASKA SERVICE CENTER

Date: **AUG 10 2010**

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

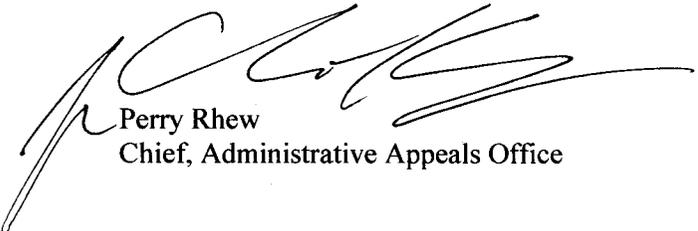
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Ethiopia (now Eritrea) 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 February 2, 1958, to September 4, 1945, and to reflect a change in her country of former nationality from Ethiopia to Eritrea.

The director reviewed the applicant's record and determined that a correction to her Certificate of Naturalization was not justified. Specifically, the director noted that the applicant had claimed the date of birth and the country of former nationality 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 a copy of her birth certificate, and information about the Ethiopian calendar. The applicant also requests a change in her country of former nationality because Eritrea is now an independent country.

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 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 birth date on the applicant's Certificate of Naturalization conforms to the birth date stated in her Application for Naturalization. Additionally, the AAO observes that the record contains numerous other documents stating 1958 as the applicant's year of birth, including: a Petition for Naturalization (Form N-405); a Memorandum of Creation of Record of Lawful Permanent Residence (Form I-818); an Arrival - Departure Record (Form I-94); three Biographic

Information Forms (Forms G-325A); a Form G-14 letter; a Refugee Classification Form (Form I-590); and a Refugee Sponsor Assurance Form (Form I-591).

The AAO acknowledges that the record includes a birth certificate showing the applicant's date of birth as September 4, 1945. However, because the applicant stated her birth date as February 2, 1958, on her naturalization application, and there was no clerical error in the preparation of the certificate, USCIS has no authority to change the applicant's Certificate of Naturalization. *See* 8 C.F.R. § 338.5.

Similarly, because the applicant indicated on her naturalization application that her country of former nationality was Ethiopia, and there was no clerical error in the preparation of the certificate, USCIS has no authority to change the applicant's Certificate of Naturalization to reflect a new country of former nationality. *See id.*

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.