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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

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E-3

[Redacted]

FILE:

Office: SAN FRANCISCO, CA
(SAN JOSE)

Date:

JAN 05 2010

IN RE:

[Redacted]

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:

[Redacted]

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 Orshew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Ethiopia and a naturalized citizen of the United States. He seeks to have his 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 his date of birth from June 30, 1948 to June 30, 1940.

The District Director reviewed the applicant's record and determined that a correction to his Certificate of Naturalization was not justified. In his decision, the District 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 for the applicant asserts that the applicant's Certificate of Naturalization contains an erroneous date of birth. In support of this assertion, counsel states that the Social Security Administration has recognized June 30, 1940 as the applicant's correct date of birth and that the Department of Homeland Security (DHS) disregarded the evidence submitted.

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 not established that his Certificate of Naturalization contains Immigration and Naturalization Service (now United States Citizenship and Immigration Services (USCIS)) related clerical errors. The AAO finds that that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in his Form N-400, Application for Naturalization. The AAO observes that the applicant also submitted other forms to USCIS with the June 30, 1948 date of birth which include, but are not limited to, Form I-589s, Requests for Asylum in the United States; Form G-325As, Biographic Informations; a Form I-485,

Application for Status as Permanent Resident; Form I-538s, Applications by Nonimmigrant Student (F-1) for Extension of Stay, School Transfer, or Permission to Accept or Continue Employment; a Form I-506, Application for Change of Nonimmigrant Status; and a previously filed Form N-565, Application for Replacement Naturalization/Citizenship Document. The record also includes an Ethiopian passport stating that the applicant was born in 1948. The AAO also acknowledges that the record includes a statement from counsel; a statement from [REDACTED] State of Eritrea, dated July 12, 2005; a Social Security statement; and a birth certificate showing the applicant's date of birth to be June 30, 1940. Nevertheless, the District Director correctly found 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 no clerical errors in the present matter, USCIS has no statutory authority to make any corrections to the applicant's certificate of naturalization, 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.