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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



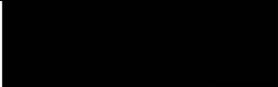
U.S. Citizenship
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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **JAN 08 2010**

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:

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 Hong Kong S.A.R., 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 name from [REDACTED] to [REDACTED] and to change her country of former nationality from the People's Republic of China to Hong Kong S.A.R.

The Director reviewed the applicant's record and determined that she was not eligible for a new certificate of naturalization. In his decision the Director noted that the applicant's name and country of former nationality on her naturalization certificate conformed to the facts as shown on her original application for naturalization. The Director denied the application accordingly.

On appeal, the applicant states that her name and country of former nationality are in error. In support of her assertions, she submits copies of her Immigrant Visa and Alien Registration application and her birth certificate.

Section 343 of the Act states, in part, that:

- (c) If the name of any naturalized citizen has, subsequent to naturalization, been changed by order of any court of competent jurisdictions, or by marriage, the citizen may make application for a new certificate of naturalization in the new name of such citizen. If the Attorney General [now Secretary of Homeland Security] finds the name of the applicant to have been changed as claimed, the Attorney General shall issue to the applicant a new certificate and shall notify the court of such action.

As the record does not indicate that the applicant's request for a change to her name is based on the order of a court, United States Citizenship and Immigration Services (USCIS) may not issue her an amended Certificate of Naturalization under section 343(c) of the Act.

Section 338 of the Act provides the statutory authority relating to the correction 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 her Certificate of Naturalization contains Immigration and Naturalization Service (now USCIS) related clerical errors, and the AAO finds that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in her application for a Certificate of Citizenship, the Form N-400, Application for Naturalization, and accompanying Form N-649, Certificate Preparation Sheet and Oath Declaration. As the name and country of former nationality that appears on the applicant's Certificate of Naturalization is the name to which the applicant swore on her Form N-400 and accompanying Form N-649, the 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]henever 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 [CIS] 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.