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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
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **JUL 16 2010**

IN RE: [REDACTED]

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

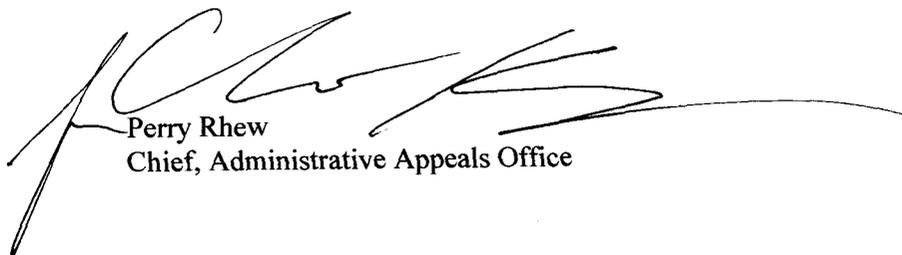
ON BEHALF OF APPLICANT:

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.

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 sustained.

The applicant is a native of Vietnam 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 November 5, 1957, to November 5, 1951.

The director reviewed the applicant's record and determined that a correction to his Certificate of Naturalization was not justified. Specifically, 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 his Certificate of Naturalization contains an erroneous date of birth. In support of this assertion he submits a letter, an order from the Superior Court of the State of California, and a California Court Order Delayed Registration of Birth, indicating that his correct date of birth is November 5, 1951.

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.

The AAO acknowledges that the record contains several documents signed by the applicant stating his date of birth as November 5, 1957, including: a Biographic Information Form (Form G-325A), dated Nov. 16, 1981; and a Petition for Naturalization (Form N-405).

Nonetheless, the applicant has established that his Certificate of Naturalization does not conform to the facts shown on his application for naturalization. Specifically, the applicant originally stated on his Application for Naturalization (Form N-400) that his date of birth is November 5, 1951. It appears that a redlined change was made from 1951 to 1957 at the time of the applicant's naturalization interview; however, the applicant did not affirm that this correction was made at his request. Further, the AAO observes that the record contains other documents with the November 5,

1951 date of birth, including: a birth certificate; an official photograph and a family tree document used for U.S. refugee processing; a Medical Examination of Applicants for United States Visas (Optional Form 157); a fingerprint card; a Biographic Information Form (Form G-325A), dated Aug. 19, 1985; an order from the Superior Court of the State of California; and a California Court Order Delayed Registration of Birth. Finally, the documents in the record indicate that the use of the November 5, 1957 date of birth was the result of a clerical error in the preparation of the applicant's Arrival - Departure Record (Form I-94) in 1980.

Because the applicant originally stated his birth date as November 5, 1951, on his naturalization application, a correction of his naturalization certificate is justified pursuant to the regulation at 8 C.F.R. § 338.5. Accordingly, the appeal will be sustained and this matter will be returned to the director for the issuance of a Certificate of Naturalization with his correct date of birth.

ORDER: The appeal is sustained. The matter is returned to the Nebraska Service Center for issuance of a corrected Certificate of Naturalization.