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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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FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

OCT 06 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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 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 March 17, 1956 to March 17, 1953.

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 of Naturalization on his application for naturalization. The application was denied accordingly.

On appeal, the applicant asserts that his Certificate of Naturalization contains an erroneous date of birth, and that his correct date of birth is March 17, 1953. In support of this assertion, he submits a statement, his birth certificate and translation, and his Colorado driver's license.

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 his 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 his naturalization application (Form N-400). Additionally, the AAO observes that the record contains other documents with the March 17, 1956 date of birth, including: his Petition for Naturalization (Form N-405), three Biographic Information Forms (Form G-325A), and an Application for Status as Permanent Resident (I-485).

Because the applicant stated that his birth date is March 17, 1956, on his 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.

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.