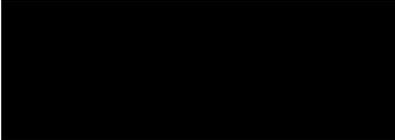




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: PHILADELPHIA, PA Date: **JAN 31 2005**

IN RE: Applicant: [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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Philadelphia, Pennsylvania. The matter 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 name from [REDACTED]

The district director reviewed the applicant's record and determined that his request was not justifiable. The application was denied accordingly.

The applicant indicates on appeal that he wants to change his name from "[REDACTED]", for personal and family-related reasons.

Section 338 of the Act provides the statutory authority relating to the contents of a Certificate of Naturalization.

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.

The AAO notes that the applicant's immigrant visa documents reflect that the applicant's name was [REDACTED] prior to his naturalization as a U.S. citizen. The record reflects, however, that in conjunction with his March 2002, U.S. naturalization proceedings, the applicant petitioned the U.S. District Court of Pennsylvania at Philadelphia for a name change, and that accordingly, the court granted the applicant a name change from [REDACTED]. The record contains no evidence to reflect that the applicant has obtained a subsequent court order for a name change from [REDACTED]

Based on the evidence contained in the record, the applicant has not established that his Certificate of Naturalization contains an Immigration and Naturalization (INS, now, U.S. Citizenship and Immigration Service, CIS) related clerical error, and the AAO finds that that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in his application for that document. The district director therefore correctly found that there are no provisions under 8 C.F.R. § 338.5, to justify or to allow for a CIS correction to the applicant's Certificate of Naturalization.

The AAO notes that because there is no clerical error in this case, 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 states in pertinent part that:

Amendment of petition for naturalization.

....

- (b) After Final Action on Petition. - 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 [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 an amendment order by a U.S. Federal Court, in accordance with the regulations set forth in 8 C.F.R. § 334.16.

ORDER: The appeal is dismissed.