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FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER DATE: DEC 27 2007

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:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form N-565, Application for Replacement Naturalization/Citizenship Document (N-565 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 and the application will be denied.

The applicant is a native of Ethiopia and a naturalized citizen of the United States. He seeks to have his Certificate of Naturalization corrected pursuant to section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, to reflect a change in his birth date from March 15, 1951, to March 15, 1941.

The director reviewed the evidence in the record and determined that the applicant had failed to establish that his birth date was March 15, 1941, or that the request to correct his N-565 application was justifiable. The application was denied accordingly.

Through counsel, the applicant concedes on appeal that he used a March 15, 1951, date of birth for U.S. asylum and immigrant visa, adjustment of status purposes. The applicant now asserts that the March 15, 1951 date of birth is incorrect, and he asserts that he provided his correct date of birth (March 15, 1941) on his Form N-400, Application for Naturalization (N-400 Application). The applicant asserts that Ethiopian birth certificate evidence corroborated his date of birth claim for naturalization purposes. The applicant additionally asserts, through counsel, that he tried to correct his erroneous birth date during his U.S. naturalization interview, but that the immigration officer erroneously failed to use his correct date of birth for certificate of naturalization purposes.

Section 338 of the Act provides the statutory authority relating to the contents of a Certificate of Naturalization. The regulations regarding the execution and issuance of Certificates of Naturalization are contained in 8 C.F.R. § 338.5, and provide, in pertinent 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 record reflects that the applicant submitted a copy of his Ethiopian passport and a B2 non-immigrant visa containing a birth date of "1941" as well as an Ethiopian birth certificate reflecting that he was born in Ethiopia on March 15, 1941, to support the claim that his birth date is on March 15, 1941 rather than on March 15, 1951. Upon review of the evidence, U.S. Citizenship and Immigration Services (CIS) determined that the applicant had failed to establish that his date of birth was March 15, 1941, rather than March 15, 1951, as previously claimed in all of his asylum and immigrant visa related documentation. Specifically, the director noted that the authenticity of the birth certificate evidence submitted by the applicant had not been established. This determination appears to have been based, at least in part, upon a U.S. Immigration and

Customs Enforcement (ICE) Forensic Document Laboratory (FDL) finding that the applicant's birth certificate contained irregularities and was probably not what it purported to be. The AAO notes that the "1941" date of birth contained on the applicant's passport and B2 non-immigrant visa also lacked probative value as it did not provide an exact date of birth.

The record reflects that the applicant continued his N-400 application process in spite of the CIS decision not to change his date of birth, and the applicant declared that the March 15, 1951, date of birth contained on his Certificate of Naturalization was true when he signed the document. The evidence in the record additionally reflects that the applicant stated that his date of birth was March 15, 1951, in a previous N-565 application for replacement of a lost naturalization document, filed on September 26, 2006. The applicant also stated that his birth date was March 15, 1951, on his Form I-589, Application for Asylum and in an attached statement, as well as on his Form I-485, Application to Register Permanent Residence or Adjust Status, and all related documents.

The AAO finds, upon review of all of the evidence contained in the record, that the applicant failed to establish to CIS that his date of birth was March 15, 1941, as set forth in his N-400 application. The applicant thus failed to establish that CIS use of his date of birth as stated on all previous immigration related documents was a clerical error, or that his Certificate of Naturalization contains Immigration and Naturalization Service (Service, now CIS) related clerical errors. Accordingly, the provisions contained in 8 C.F.R. § 338.5 do not justify a CIS correction to the applicant's Certificate of Naturalization.

It is noted that because there are no clerical errors in the present matter, 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).¹

Based on the reasoning set forth above, the appeal will be dismissed and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.

¹ 8 C.F.R. §334.16(b) states in pertinent part:

[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 [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.