

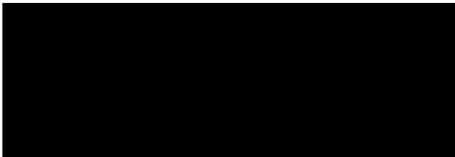
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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: NEBRASKA SERVICE CENTER

Date:

OCT 31 2007

IN RE:

Applicant:



APPLICATION:

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

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.

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

Robert P. Wiemann, 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 Mexico 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 June 2, 1958 to June 20, 1958.

The Director reviewed the applicant's record and determined that a correction to his Certificate of Naturalization was not justified. *Decision of the Director*, dated June 4, 2007. 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, the record includes a copy of the applicant's Mexican passport, a Mexican Military Service Registration, and a birth certificate stating that the applicant's date of birth is June 20, 1958.

Section 338 of the Act provides the statutory authority relating to the contents 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 his Certificate of Naturalization contains Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) related clerical errors with reference to the June 20, 1958 date of birth. The AAO notes that while the naturalization certificate for the applicant lists a June 2, 1958 date of birth, the record includes a Form N-400, Application for Naturalization; a Form I-213, Record of Deportable Alien; and a Form I-698, Application to Adjust Status from Temporary to Permanent Resident listing the applicant's date of birth as June 9, 1958. The AAO observes that the record includes other documentation with the June 2, 1958 date of birth including a Certificate Preparation Sheet and Oath Declaration; a Petition for a Name Change; a Resident Alien Card; a Form I-181, Memorandum of Creation of Lawful Permanent Residence; and a Form I-687, Application for Status as a Temporary Resident. Accordingly, the Director 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 with the June 20, 1958 date of birth.

Because there are no clerical errors in the present matter regarding the June 20, 1958 date of birth, CIS has no statutory authority to make any corrections to the applicant's certificate of citizenship, 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]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.

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.