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U.S. Citizenship
and Immigration
Services

E4



FILE: [REDACTED] Office: NEW YORK, NY Date: JUL 03 2008

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Hong Kong and a naturalized citizen of the United States. She seeks to have her 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 her date of birth from November 8, 1951 to December 19, 1951. In her decision the District Director noted that the applicant had stated her date of birth as November 8, 1951 at the time she applied for adjustment of status. The application was denied accordingly.

On appeal, the applicant asserts that her Certificate of Naturalization contains an erroneous date of birth. The applicant submits a copy of pages from her British passport, a benefits statement from the Social Security Administration and a copy of an Application for a Hong Kong Special Administrative Region (HKSAR) Passport. All three documents indicate that the applicant's date of birth is December 19, 1951.

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 her Certificate of Naturalization contains Immigration and Naturalization (now Citizenship and Immigration Services, CIS)) related clerical errors. The AAO finds that that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in the Form N-400, Application to Petition for Naturalization and the Form I-405, Petition for Naturalization. Further, the November 8, 1951 date of birth is listed on the applicant's Form I-485, Application for Status as a Permanent Resident, and on two Form G-325s, Biographic Information forms, submitted by the applicant in 1983 and 1989. While the December 19, 1951 date of birth claimed by the applicant is recorded in the birth certificate issued to the applicant by the Hong Kong Births and Deaths Registry and the applicant claimed a December 19, 1951 birth date in a 1982 statement, the AAO notes that these documents were submitted in support of the applicant's Form I-485, which lists her date of birth as November 8, 1951, and prior to her filing of the Form N-400 and Form N-405, which continue to state her birth date as November 8, 1951. The record offers no explanation as to why the applicant having identified December 19, 1951 as her correct date of birth, then filed for adjustment and naturalization using the November 8, 1951 date. Accordingly, the district 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.

Because there are no clerical errors in the present matter, 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.