



U.S. Citizenship  
and Immigration  
Services

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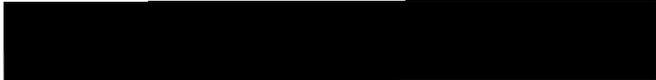
FILE:

OFFICE: LOS ANGELES, CA

DATE: MAR 07 2008

IN RE:

APPLICANT:



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, Los Angeles, California. The matter is presently before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form N-565, Application to Replace Naturalization/Citizenship Document (N-565 application) will be denied.<sup>1</sup>

The applicant is a native of Mexico and a naturalized citizen of the United States. She seeks to have her 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 her birth date from November 25, 1944, to November 25, 1941.

The district director reviewed the record and determined that the applicant's request was not justifiable. The N-565 application was denied accordingly.

The applicant asserts on appeal that her certificate of naturalization contains an erroneous date of birth. The applicant submits a recently acquired birth certificate containing a November 25, 1941 birth date, and she requests that U.S. Citizenship and Immigration Services (CIS) correct the November 25, 1944 birth date on her naturalization certificate.

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 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.

A review of the applicant's record reflects that she stated her birth date was November 25, 1944, for all U.S. immigrant visa and naturalization purposes. The applicant's immigrant visa application and supporting documents contain a November 25, 1944 date of birth. The applicant's Form N-400, Petition for Naturalization and her naturalization oath declaration documentation also contain the November 25, 1944 date of birth. Based on the evidence in the record, the applicant has not established that her certificate of

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<sup>1</sup> The AAO notes that the application was originally denied on May 11, 2005. An appeal of that decision was filed with the district director on June 20, 2005. After receipt of the appeal, the district director reopened the decision and issued a second denial on November 7, 2006. On December 8, 2006 a second appeal, based on the second denial, was filed. On December 27, 2006, the file containing the June 20, 2005 appeal was forwarded to the AAO. The file did not contain the December 8, 2006 appeal. On March 15, 2007, the AAO rejected the June 20, 2005 appeal as untimely filed. On August 3, 2007 the file containing both appeals was received at the AAO. The current decision relates to the December 8, 2006 appeal.

naturalization contains Immigration and Naturalization Service (Service, now CIS) related clerical errors, and the AAO finds that the information on the applicant's certificate of naturalization conforms to the facts as set forth in her application for that document. Accordingly, the provisions contained in 8 C.F.R. § 338.5 do not justify or allow for 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).<sup>2</sup>

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.<sup>3</sup>

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<sup>2</sup> 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.

<sup>3</sup> The appeal is dismissed without prejudice to the applicant's submitting a new N-565 application upon compliance with the regulations as set forth in 8 C.F.R. § 334.16.