

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



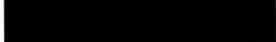
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



E₄

FILE:



Office: TEXAS SERVICE CENTER

Date: OCT 15 2008

IN RE:

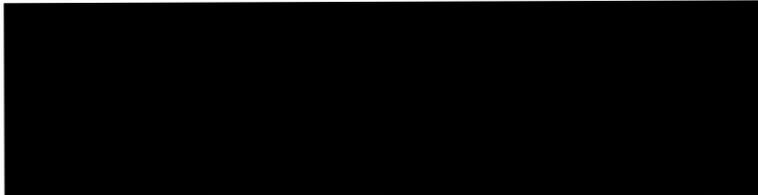
Applicant:



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:



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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 Vietnam 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 name from [REDACTED] to [REDACTED].

The Director reviewed the applicant's record and determined that she was not eligible for a corrected certificate of naturalization. The application was denied accordingly.

On appeal, counsel for the applicant states that she made an honest mistake at the time of naturalization and did not intend to state her name to be [REDACTED]. She submits copies of her Permanent Resident Card, birth certificate, driver's license, and social security card to support that her name is [REDACTED].

Section 343 of the Act states, in part, that:

- (c) If the name of any naturalized citizen has, subsequent to naturalization, been changed by order of any court of competent jurisdictions, or by marriage, the citizen may make application for a new certificate of naturalization in the new name of such citizen. If the Attorney General [now Secretary of Homeland Security] finds the name of the applicant to have been changed as claimed, the Attorney General shall issue to the applicant a new certificate and shall notify the court of such action.

While the AAO acknowledges the evidence submitted by the applicant to establish that her name is [REDACTED], this documentation does not satisfy the requirement at section 343(c) of the Act for a new Certificate of Naturalization, as it does not indicate that the applicant's name has been changed "by order of any court of competent jurisdiction." Accordingly, the applicant has not established eligibility for a new Certificate of Naturalization under section 343 of the Act.

Section 338 of the Act provides the statutory authority relating to the correction 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 Service (now Citizenship and Immigration Services (CIS)) related clerical errors, and the AAO finds that that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in her application for naturalization, the Form N-400. The AAO acknowledges that the record includes a Form I-751, Petition to Remove the Conditions on Residence; a credit card; a bank statement and customer access agreement; tax statements; a medical bill; a provisional driver's license; a Form DS-230, Application for Immigrant Visa and Alien Registration; a Form I-130, Petition for Alien Relative; a Form G-325A, Biographic Information sheet, for the applicant's spouse; a Form G-325A, Biographic Information sheet, for the applicant; and a Form DS-2053, Medical Examination for Immigrant or Refugee Applicant with the name [REDACTED]. However, as the name that appears on the applicant's Certificate of Naturalization is the name to which the applicant swore on her Form N-400, 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.

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 naturalization, 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.