U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: TAMPA, FLORIDA Date: JAN 09 2004

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:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application was denied by the Acting District Director, Tampa, Florida. 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 naturalized citizen of the United States. She seeks to have her original Certificate of Naturalization, which was issued to her on October 27, 1994, 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 March 23, 1947 to March 23, 1937.

The acting district director reviewed the applicant's record and determined that the applicant's request was not justifiable pursuant to regulations set forth in 8 C.F.R. § 338.5. The application was denied accordingly.

On appeal the applicant indicates that the U.S. resettlement agency in Hawaii incorrectly recorded her birth date when she became a resettled refugee in 1975. The applicant states that she recently obtained evidence reflecting her true birth date, and she submits a translated copy of a Vietnamese birth certificate to show that she was born in 1937 rather than 1947.

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 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.
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> . . . .
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> (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 evidence in the record reflects that the applicant consistently listed her birth date as March 23, 1947, on the

immigration documents contained in her record, including the Application to File Petition for Naturalization and her Certificate of Naturalization, which required a signature under oath. The AAO thus finds that the applicant's Certificate of Naturalization does not contain any clerical errors and that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in her application for that document. There are therefore no provisions under 8 C.F.R. § 338.5 to justify a CIS correction to the applicant's Certificate of Naturalization.

Because there is no clerical error in this case, 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 on the matter in which the Government is provided with an opportunity to present its position on the matter. The AAO notes that 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).

Section 334.16 states in pertinent part that:

> 334.16 Amendment of petition for naturalization.
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> . . . .
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> (b) After Final Action on Petition. - Whenever 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 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 [now Citizenship and Immigration Services, 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 acting district director's decision will be affirmed and the appeal will be dismissed without prejudice.[1]

ORDER: The appeal is dismissed.

[1] The AAO notes that the present decision is without prejudice to the applicant's submitting a request to a U.S. Federal Court in accordance with the regulations set forth in 8 C.F.R. § 334.16.