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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: ST. PAUL, MN Date: MAR 29 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:

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, Director
Administrative Appeals Office

**DISCUSSION**: The Application was denied by the St. Paul, Bloomington, Minnesota. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Cambodia 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 13, 1950 to June 13, 1946.

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

The applicant asserts on appeal that while living in Cambodia, he subtracted four years from his actual age to avoid persecution by the [redacted]. The applicant asserts that he disclosed the incorrect date of birth to refugee camp authorities in Thailand, and again to immigration officials in the United States, but that no action was taken to correct his birth date. The applicant submits his Cambodian birth certificate, medical letters and records, and affidavits from family members, to support the assertion that his actual birth year was 1946 rather than 1950. The applicant asserts that the evidence provided on appeal establishes that he is entitled to the issuance of a corrected Certificate of Naturalization.

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 record reflects that the applicant provided information indicating that his birth date was June 13, 1950, in his immigration documents, including his Application for Status as a Permanent Resident and his Application to File Petition for Naturalization. The AAO therefore finds that the applicant's Certificate of Naturalization does not contain clerical errors and that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in his application for that document. Accordingly, there are no provisions under 8 C.F.R. § 338.5 to justify or allow for a Citizenship and Immigration Services (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 in which the Government is provided 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 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 regulations set forth in 8 C.F.R. § 334.16.

**ORDER:** The appeal is dismissed.