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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: HOUSTON, TEXAS 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 Interim District Director, Houston, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Eritrea 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 May 5, 1974, to July 5, 1974.

The interim 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 that the May 5, 1974, date of birth contained on her Certificate of Naturalization and other immigration documents is incorrect, and that her birth certificate establishes that her true birth date is July 5, 1974. The applicant asserts that the error is not the fault of the Immigration and Naturalization Service (now, Citizenship and Immigration Services, CIS), and that she was unaware of the error prior to applying for a correction of her birth date.

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 her birth date was May 5, 1974, on all of her immigration documents, including her Immigrant Visa and Alien Registration application and her 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 her application for that document. Accordingly, there are no provisions under 8 C.F.R. § 338.5 to justify or allow for 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 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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> (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.