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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA 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:

[redacted]

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, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Mexico 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 July 19, 1944 to July 19, 1940.

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

Counsel asserts on appeal that the applicant relied in good faith on information contained in a birth certificate that was falsified by her mother. Counsel asserts further that the record contains unequivocal evidence that the applicant's true date of birth is July 19, 1940, and that the interim district director therefore improperly denied the applicant's request to correct the date of birth written on her 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 her birth date was July 19, 1944, in all of her immigration documents, including her Application for Status as a Permanent Resident 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 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.[1]

ORDER: The appeal is dismissed.

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[1] Counsel refers to several court cases, to support her assertion that the applicant's request to change her date of birth is justified. The AAO notes that all of the cases referred to by counsel involved federal court actions for amendments or corrections to certificates of naturalization.