



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date: AUG 06 2008

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 China 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 October 17, 1949 to October 3, 1947.

The Director reviewed the applicant's record and determined that a correction to his certificate of naturalization was not justified. In his decision, the Director noted that the applicant had claimed the date of birth on the certificate at the time of naturalization. The application was denied accordingly. *Decision of the Director*, dated January 31, 2008.

On appeal, the applicant asserts that his Certificate of Naturalization contains an erroneous date of birth. The record contains a birth certificate stating the applicant's date of birth as October 3, 1947; certifications from the applicant's former neighbors stating the applicant was born in 1947; a certification from the applicant's cousin; and a statement from the applicant asserting that he was born on October 3, 1947.

Section 338 of the Act provides the statutory authority relating to the contents 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.

On appeal, counsel asserts that the applicant notified the legacy Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) of the error in his date of birth in 1998 when he submitted an application for a new resident alien card and that the card issued to him in November 1998 reflected his correct date of birth, October 3, 1947. While waiting for the issuance of a new card, counsel states, the applicant filed the Form N-400, Application for Naturalization, using the October 17, 1949 date of birth so that it would conform to the resident alien card that was then in his possession. Counsel contends that on September 24, 1999, the date on which the applicant received his Certificate of Naturalization, the October 17, 1949 date of birth listed on that document was inconsistent with legacy Immigration and Naturalization Service records, which by then reflected the applicant's correct date of birth.

The AAO notes that the record confirms that the applicant was issued a new resident alien card in November 1998 and that agency records were amended to reflect an October 3, 1947 date of birth for the applicant.

However, the applicant's file also indicates that the applicant was interviewed in connection with his Form N-400 application on August 4, 1999, well after he had received his corrected resident alien card, and that at this interview the applicant stated his date of birth as October 17, 1949, not October 3, 1947. Therefore, based on the evidence contained in the record, the applicant has not established that his Certificate of Naturalization contains CIS-related clerical errors. The date of birth on the applicant's Certificate of Naturalization conforms to the date of birth set forth in the Form N-400, the date of birth to which the applicant attested during his naturalization interview. The AAO observes that the applicant also submitted other forms to CIS with the October 17, 1949 date of birth which include a Form N-649, Certification Preparation Sheet and Oath Declaration; an Immigrant Visa and Alien Registration Form; an Application for Immigrant Visa and Alien Registration; a Family Composition of Immigrant Visa Applicant; and an Optional Form 157, Medical Examination of Applicants for United States Visas. The record also contains a passport from the People's Republic of China with the October 17, 1949 date of birth, which shows a temporary permanent resident stamp that lists the applicant's date of birth as October 17, 1949. Accordingly, 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.