

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

53

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

OFFICE: NEW YORK, NY

Date: JUN 03 2008

IN RE:

APPLICANT:

[REDACTED]

APPLICATION:

Application for Replacement Naturalization/Citizenship Document under Sections 338 and 343 of the Immigration and Nationality Act, 8 U.S.C. §§ 1449 and 1454.

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 District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the application will be denied.

The applicant is a native of Vietnam and a naturalized citizen of the United States. The applicant seeks to correct a Certificate of Naturalization pursuant to sections 338 and 343 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1449 and 1454, claiming that the date of birth listed on the certificate is incorrect.

The district director determined that the certificate of naturalization reflects the applicant's correct date of birth, as represented by him under oath when he obtained his lawful permanent residency and naturalization. The application was denied accordingly.

On appeal, the applicant maintains that the date of birth listed on his certificate, and on his lawful permanent resident card, is incorrect. He states that he "[en]listed the aid of a translator [who] erroneously entered his date of birth" as December 31, 1955, and not December 31, 1945. See Form I-290B, Notice of Appeal to AAO. The applicant further states that he was suffering from depression at the time and did not recognize the mistake.

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 pertinent 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.

The record reflects that December 31, 1955 is listed as the applicant's date of birth on his naturalization application, as well as the documents he submitted in support of his application for permanent residence. It is also the date listed on his certificate of naturalization. The record contains a birth certificate issued in 2001 indicating the applicant's date of birth is December 31, 1945. There are also statements in the record purporting to establish that December 31, 1945 is the applicant's correct date of birth.

The AAO notes that the date of birth on the applicant's certificate of naturalization conforms to the facts as set forth in the application for that document. Absent a clerical error, CIS is without authority to change the certificate of citizenship to reflect a date of birth other than that shown on the naturalization application. *See* 8 C.F.R. § 338.5. The appeal must therefore be dismissed, and the application denied.

ORDER: The appeal is dismissed. The application is denied.