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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date: AUG 24 2009

IN RE: [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:



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.

John F. Grissom
Acting 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 sustained.

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 November 22, 1965 to November 22, 1962.

The Director reviewed the applicant's record and determined that a correction to her Certificate of Naturalization was not justified. In his decision, the Director noted that the date of birth on the applicant's Certificate of Naturalization was the date that the issuing office had determined should be used. He denied the application accordingly.

On appeal, counsel asserts that the Certificate of Naturalization for the applicant contains an erroneous date of birth and that United States Citizenship and Immigration Services (USCIS) failed to consider the applicant's corrected birth certificate, her passport, or her lawful permanent resident card, which show the correct date of birth.

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.

Based on the evidence contained in the record, the applicant has established that the date of birth shown on her Certificate of Naturalization does not conform to the facts as set forth in her Form N-400, Application for Naturalization. The AAO observes that the Form N-400 approved by USCIS lists the applicant's date of birth as November 22, 1962. The AAO notes that an unsigned post-it note was placed on the Form N-400, stating that the applicant's date of birth had been corrected to November 22, 1965. While the AAO acknowledges this post-it note, it also observes that the Form N-400, signed by the applicant under oath, states the November 22, 1962 date of birth and that the applicant specifically affirmed November 22, 1962 as her date of birth at the time of her

naturalization interview. The record also includes a Mexican passport; a Permanent Resident Card; a birth certificate; a driver's license; a statement from the applicant; and a student identification card with the November 22, 1962 date of birth. The AAO notes that the record includes a Form N-649, Certificate Preparation Sheet and Oath Declaration; a Form I-693, Medical Examination of Aliens Seeking Adjustment of Status; and a birth certificate showing the applicant's date of birth to be November 22, 1965. The AAO also observes that the record includes a Form I-698, Application to Adjust Status from Temporary to Permanent Resident; a fingerprint index sheet; a Temporary Resident Card; and student identification cards listing the applicant's date of birth as November 26, 1965. The record also includes a Form I-687, Application for Status as a Temporary Resident listing the applicant's date of birth as October 22, 1965. Nevertheless, the Director erred in finding there are no provisions under 8 C.F.R. § 338.5 to justify or to allow for a USCIS correction to the applicant's Certificate of Naturalization.

Because the applicant's Certificate of Naturalization does not confirm to the facts shown on her application for naturalization, USCIS has statutory authority to make the correction to the applicant's Certificate of Naturalization.

Based on the reasoning set forth above, the appeal will be sustained and the case remanded to the Nebraska Service Center to issue the applicant a new Certificate of Naturalization with the November 22, 1962 date of birth.

ORDER: The appeal is sustained and the case remanded to the Nebraska Service Center to issue the applicant a new Certificate of Naturalization with the November 22, 1962 date of birth.