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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: FEB 06 2009

IN RE: Applicant: [redacted]

APPLICATION: Application for Replacement Naturalization/Citizenship Document under Section 338 of the Immigration and Nationality Act, 8 U.S.C. § 1449.

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Cuba 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 show her date of birth as January 5, 1946 instead of January 5, 1947.

On the Form N-565, Application for Replacement [of] Naturalization/Citizenship Document, the applicant asserts that, years after her naturalization in 1973, she learned that an incorrect year of birth was recorded when her parents registered her birth. With the Form N-565, the applicant submitted (with certified English language translations) a parish priest's attestation to church records about the applicant's dates of baptism and birth, and an official certification of the applicant's birth in Cuba. These documents support the applicant's claim that she was born not in 1947, but in 1946.

The Interim District Director reviewed the applicant's record and determined that a correction to her Certificate of Naturalization was not justified. *Decision of the Interim District Director*, dated April 30, 2007. The application was denied accordingly.

At section 3 of the Form I-290B, Notice of Appeals to the Administrative Appeals Office, counsel states:

> USCIS erroneously denied [the applicant's] N-565 Application which sought to correct her birth from June 5, 1947 to June 5, 1946. USCIS failed to fully concede the evidence, in whole and in part, and to give proper weight to the evidence presented.

In his letter accompanying the Form I-290B, counsel contends that the Form N-565 application should be granted because of the extent to which it is supported by corroborative items of evidence in the record, including these exhibits submitted with the letter: (1) the applicant's affidavit in support of the appeal; (2) an affidavit of the applicant's oldest sister that attests to the applicant's being born on June 5, 1946; (3) the applicant's Cuban birth certificate, with English language translation; (4) the applicant's baptismal certificate, with English language translation; (5) photographs of the applicant that are presented as having been taken in 1961 in celebration of her 15th birthday; and (6) a photograph of the applicant, with an untranslated Spanish annotation, presented as having been taken in 1957 in celebration of her 11th birthday. The AAO has considered all of these submissions and acknowledges their evidentiary bearing on the issue of the applicant's true date of birth. However, neither counsel nor the applicant anywhere allege that the date of birth U.S. Citizenship and Immigration Services (USCIS) entered on the applicant's Certificate of Naturalization is other than that specified by the applicant in her Form N-400, Application to File Petition for Naturalization.

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.
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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.

Based on the evidence contained in the record, the applicant has not established that her Certificate of Naturalization contains Immigration and Naturalization Service (now USCIS) related clerical errors, and the AAO finds that that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in her Form N-400. The AAO observes that the record also contains a Form I-485A, Application by Cuban Refuge for Permanent Residence, and a Form G-325, Biographic Information, that specify the same birth date for the applicant as the applicant recorded on her Form N-400.

Because the date of birth on the Certificate of Naturalization delivered to the applicant conforms to the date of birth shown on the application for naturalization, and because there was no clerical error in preparing the Certificate of Naturalization, USCIS has no statutory authority to make any corrections to that certificate. 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]henever 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 [USCIS] 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.