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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



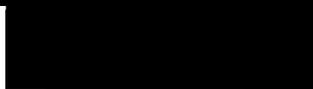
U.S. Citizenship  
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FILE:



Office: TEXAS SERVICE CENTER

Date:

MAY 03 2010

IN RE:



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:

SELF-REPRESENTED

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained in part and dismissed in part.

The applicant is a native of Iran and a naturalized citizen of the United States. He seeks to have his Certificate of Naturalization reissued to reflect a change in his name from [REDACTED] to [REDACTED] and a correction in his date of birth from August 8, 1954 to August 8, 1952.

The Director reviewed the applicant's record and determined that a correction of the date of birth on 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 Director did not address whether a new Certificate of Naturalization would be issued in the name of [REDACTED]

On appeal, the applicant asserts that his Certificate of Naturalization contains an erroneous date of birth. In support of this assertion, he submits a statement; a benefits statement from the Social Security Administration; a Petition for Name Change; an Order from the Chancery Court for Montgomery County, Tennessee; a birth certificate; a copy of his naturalization certificate; and an affidavit indicating that his date of birth is August 8, 1952.

The AAO will first consider the applicant's request that his Certificate of Naturalization be reissued in the name of [REDACTED]

Section 343(c) of the Act provides:

If the name of any naturalized citizen has subsequent to naturalization, been changed by order of any court of competent jurisdiction, or by marriage, the citizen may make application for a new certificate of naturalization in the new name of such citizen. If the Attorney General [now Secretary of Homeland Security] finds the name of the applicant to have been changed as claimed, the Attorney General [Secretary] shall issue to the applicant a new certificate . . . .

The record contains an order from the Chancery Court for Montgomery County, Tennessee, entered January 5, 2009, granting the applicant's request for a change in his name to [REDACTED]. Accordingly, the applicant has established that his name has been legally changed by a court of competent jurisdiction and the Director shall issue him a new Certificate in the name of [REDACTED]

The AAO now turns to the applicant's request that his date of birth be corrected from August 8, 1954 to August 8, 1952.

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 not established that his Certificate of Naturalization contains Immigration and Naturalization Service (now United States Citizenship and Immigration Services (USCIS)) related clerical errors. The AAO finds that that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in his Form N-400, Application to File Petition for Naturalization. The AAO observes that the applicant also submitted other forms to USCIS with the August 8, 1954 date of birth, including a Form N-405, Petition for Naturalization; Form I-485s, Applications for Status as Permanent Resident; Form G-325s, Biographic Informations; a Form G-325A, Biographic Information; and a Form I-130, Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa. The AAO acknowledges that the record includes Form 102s, Applications by Nonimmigrant Alien for Replacement of Arrival Document, and Form I-538s, Applications by Nonimmigrant Student (F-1) for Extension of Stay, School Transfer, or Permission to Accept or Continue Employment, showing the applicant's date of birth as August 8, 1952. Nevertheless, the Director correctly found that there are no provisions under 8 C.F.R. § 338.5 to justify or to allow for a USCIS correction to the applicant's date of birth on his Certificate of Naturalization.

Because there are no clerical errors in the present matter, USCIS has no statutory authority to correct the applicant's date of birth. 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, as it relates to the correction of the applicant's date of birth, 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. However, as previously noted, the AAO will sustain that part of the applicant's appeal dealing with the issuance of a new Certificate of Citizenship in the name of [REDACTED]

**ORDER:** The appeal of the Director's denial of the applicant's request for a correction to his date of birth is dismissed. The Director shall issue to the applicant a new Certificate of Citizenship in the name of [REDACTED]