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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] OFFICE: TEXAS SERVICE CENTER DATE: DEC 27 2007

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:

[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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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 dismissed and the application will be denied.

The applicant is a native of Iran and a naturalized citizen of the United States. He seeks to have his Certificate of Naturalization corrected pursuant to section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, to reflect a change in his birth date from September 10, 1949, to April 30, 1951.

The director determined that the applicant's request was not justifiable under 8 C.F.R. § 338.5. The application was denied accordingly.

Through counsel, the applicant asserts on appeal that birth certificate evidence contained in the record establishes his true date of birth is April 30, 1951, rather than September 10, 1949. The applicant concedes that he used the September 10, 1949, date of birth for all immigrant visa related purposes. The applicant indicates, however, that his use of the wrong birth date was an honest mistake, and the applicant indicates, through counsel, that federal case law demonstrates an amendment of the date of birth on his certificate of naturalization is justified under 8 C.F.R. § 338.5.

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.

In the present matter, the applicant did not state on his Form N-400, Application to File Petition for Naturalization (N-400 Application) that his birth date was April 30, 1951. Rather the N-400 application reflects the applicant initially indicated that his date of birth was December 10, 1949. This date was then crossed out and replaced with November 20, 1952. The record indicates that neither date was supported by corroborative birth certificate evidence, and the N-400 application indicates the date was changed by an immigration officer to September 10, 1949. Additional N-400 application related information, and the naturalization oath related documentation contained in the record reflect that the applicant reaffirmed under oath that his date of birth was September 10, 1949. In addition, the record reflects that the applicant's date of birth is listed as September 10, 1949, on his Form I-130, Petition to Classify Status of Alien Relative, as well as on his Form I-485, Application to Register Permanent Residence or Adjust Status, and all other immigrant visa related documents.

A review of all of the evidence contained in the record reflects that the applicant failed to demonstrate that he claimed or established that his date of birth was April 30, 1951, for Form N-400 purposes. The applicant additionally failed to establish that Immigration and Naturalization Service (Service, now U.S. Citizenship and Immigration Services, CIS) use of his date of birth, as stated on all previous immigration related documents was a clerical error, or that his Certificate of Naturalization contains Service (CIS) related clerical errors. The provisions contained in 8 C.F.R. § 338.5 therefore do not justify a CIS correction to the applicant's Certificate of Naturalization.

Through counsel, the applicant concedes that his certificate of naturalization does not contain a Service (CIS) related clerical error, and that, on its face, 8 C.F.R. § 338.5 does not appear to justify an amendment to the applicant's certificate of naturalization. The applicant asserts, however, that federal courts have granted birth date amendments in cases similar to his, and the applicant indicates that, because he did not willfully or fraudulently misrepresent his date of birth, and because the government would suffer no detriment or prejudice if his date of birth were changed, his request for a birth date amendment on his certificate of naturalization should be approved under 8 C.F.R. § 338.5.

The AAO notes that, although a federal court has jurisdiction and authority to order a date of birth amendment to the applicant's certificate of naturalization, 8 C.F.R. § 338.5 does not grant the Service (CIS) authority to make such an amendment if the applicant did not claim and establish that his birth date was April 30, 1951, on his N-400 application, and if there are no Service (CIS) related clerical errors on the applicant's N-400 application. The AAO additionally notes that 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, only 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).¹

The AAO therefore finds, based on the reasoning set forth above, that the present appeal must be dismissed, and the application must be denied.²

¹ 8 C.F.R. §334.16(b) states in pertinent part:

[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 [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.

² The appeal is dismissed without prejudice to the applicant's submitting a new application upon compliance with the regulations as set forth in 8 C.F.R. § 334.16.

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