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U.S. Citizenship
and Immigration
Services

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E4

FILE:

Office: TEXAS SERVICE CENTER

Date: FEB 02 2009

IN RE:

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:

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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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.

The applicant is a native of Iran and a naturalized citizen of the United States. He seeks to have his Certificate of Naturalization issued under section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, corrected in order to reflect a change in his date of birth from March 5, 1946 to January 21, 1946.

The Director determined that a correction of the applicant's date of birth on his Certificate of Naturalization was not justified and the application was denied accordingly. *Decision of the Director*, at 1, dated June 26, 2008.

On appeal, counsel asserts that the mistake was a result of the applicant's lack of understanding of English and ample evidence reflects that the mistake was not made with an improper motive or the intent to commit fraud or misrepresentation. *Brief in Support of Appeal*, at 4, dated July 2008. The applicant has submitted a copy of his birth certificate with translation, social security card, letter from the Social Security Administration, driver's license, Iranian passport and oath of affirmation.

Section 338 of the Act provides the statutory authority related to the contents of a Certificate of Naturalization. In addition, the specific regulations regarding the correction of Certificates of Naturalization are located at 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, as the AAO finds that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in his Form N-400, Application for Naturalization. The AAO observes that the record also contains other immigration-related documents listing the applicant's date of birth as March 5, 1946, including a Form G-325, Biographic Information sheet and a Form I-130, Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa. Accordingly, the Director correctly found that there are no provisions under 8 C.F.R. § 338.5 to justify or to allow a USCIS correction of 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 on his Certificate of Naturalization. The AAO notes that the cases cited by counsel involve hearings in federal district courts, the appropriate venue for addressing non-clerical errors. 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 USCIS 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]henver 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.

Based on the reasoning set forth above, the appeal will be dismissed without prejudice to the applicant's submission of a request to a U.S. federal court in accordance with the Act and regulations.

ORDER: The appeal is dismissed.