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

U.S. Citizenship and Immigration Services

[redacted]

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Date: AUG 2 1 2012 Office: NEBRASKA SERVICE CENTER File: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Nebraska Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the director of the Nebraska Service Center and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The AAO is now reopening the matter upon its own motion. The prior decision of the AAO will be withdrawn. The case will be remanded to the Nebraska Service Center for further action.

The applicant seeks to have his 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 his year of birth from 1971 to 1974. In its April 5, 2010 decision, the AAO dismissed the appeal because the record showed that the applicant's date of birth on his certificate of naturalization conformed to the information stated on his naturalization application and he failed to establish that any clerical error attributable to United States Citizenship and Immigration Services (USCIS) was made in the preparation of his certificate. *See* 8 C.F.R. § 338.5(a) (stating the requirements for a corrected certificate).

The applicant then filed a lawsuit in the United States District Court for the Central District of California (*Kumar v. Rhew, et al.*, 11-CV-10684 (C.D. Cal Dec. 27, 2011), seeking an order compelling (USCIS) to change his certificate of naturalization to reflect what he asserts to be his correct date of birth. On August 17, 2012, the applicant and USCIS filed a Stipulation to Dismiss with the court agreeing that USCIS would reopen these proceedings and remand the matter to the Nebraska Service Center without further briefing by either party. Accordingly, the AAO hereby reopens these proceedings pursuant to the regulation at 8 C.F.R. § 103.5(a)(5). As the applicant has waived his opportunity to provide a brief to the AAO, the matter will be remanded directly to the Nebraska Service Center for further action in accordance with the Stipulation to Dismiss.

ORDER: The April 5, 2010 decision of the Administrative Appeals Office is withdrawn. The matter is remanded to the Nebraska Service Center for further action.