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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: SEATTLE (YAKIMA), WA Date: AUG 05 2005

IN RE: Applicant: [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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The applicant is a native of Vietnam and a naturalized citizen of the United States. He 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 date of birth from August 13, 1984 to August 13, 1986.

The district director reviewed the applicant's record and determined that the applicant's request was not justifiable. The application was denied accordingly.

On appeal, the applicant, through counsel, asserts that his birth certificate previously contained an erroneous date of birth, and that the erroneous birth date was used when the U.S. Consulate processed his U.S. Immigrant Visa in 1995. Counsel asserts that the applicant has officially corrected his Vietnamese birth certificate, and counsel states that the applicant's Vietnamese passport and baptismal certificate also reflect his true August 13, 1986 birth date. Counsel asserts that the applicant's 1996, U.S. I-94 Immigration Departure Record also contains the applicant's correct 1986 birth date, as does the U.S. Resident Alien card the applicant received from the Immigration and Naturalization Service (Service, now U.S. Citizenship and Immigration Services, CIS) in August 1996. Counsel asserts that the I-94 and resident alien card evidence establish that the Service (CIS) officially accepted the August 13, 1986 date as the applicant's true birth date. Counsel asserts further that the applicant stated in his N-600, Application for Certificate of Citizenship, filed in March 2002, that his birth date is March 13, 1986, and that he is entitled to have the birth date contained in his Certificate of Citizenship corrected pursuant to section 338 of the Act.

Section 338 of the Act provides the relevant statutory authority relating to the contents of a Certificate of Citizenship. In addition, the specific regulations regarding the execution and issuance of Certificates of Citizenship 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.

The record contains an August 1994, issued Vietnamese birth certificate stating that the applicant was born on August 13, 1984. The record additionally contains a copy of a Vietnamese passport issued in March 1995, stating that the applicant was born on August 13, 1984. The record reflects that these documents were used for December 1995, U.S. immigrant visa processing purposes, and the Immigrant Visa and Alien Registration document contained in the record states that the applicant's birth date is August 13, 1984.

The record also contains a corrected Vietnamese birth certificate with no issuance date, and a copy of the biographical page of a Vietnamese passport. The passport contains no issuance date or official remark or notation regarding the applicant's birth date, and, other than a handwritten alteration of the number "4" to the number "6" (from 1984 to 1986), the passport is identical in content, official stamp and penmanship to the passport submitted to the Consulate in 1995. The record additionally contains several 2002 letters written by the applicant's father prior to the issuance of the applicant's N-600 Certificate of Citizenship, stating that the applicant's true date of birth is August 13, 1986, and referring to his submission of the applicant's resident alien card, baptismal certificate, corrected birth certificate and official Vietnamese confirmation containing the applicant's August 13, 1986 birth date.

The AAO finds that the evidence contained in the record fails to demonstrate that the Immigration and Naturalization Service (Service, now CIS) officially recognized a change in the applicant's date of birth from that provided by him during his immigrant visa processing purposes. The AAO notes that the date of birth provided on the applicant's I-94 document was not provided by the Service, but rather, was handwritten in by the applicant. The AAO notes further that the record contains no indication that the Service (CIS) made a determination or examined any corrective date of birth evidence prior to issuing the applicant's resident alien card in 1996, or that the Service (CIS) examined, in any way, the possibility of an error in the applicant's date of birth prior to issuing his resident alien card.

Accordingly, the AAO finds that the applicant has not established that his Certificate of Citizenship contains Service (CIS) related clerical errors. The AAO therefore finds that the district director correctly found that there are no provisions under 8 C.F.R. § 338.5 to justify or to allow for a CIS correction to the applicant's Certificate of Naturalization.

Because there are no clerical errors in the present matter, CIS has no statutory authority to make any corrections to the applicant's certificate of citizenship, and 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]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 submitting a request to a U.S. Federal Court in accordance with the Act and Regulations.

**ORDER:** The appeal is dismissed.