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U.S. Citizenship
and Immigration
Services

E3

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CA

Date: **NOV 15 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, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of China and a naturalized citizen of the United States. She seeks to have her 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 her date of birth from December 16, 1974 to October 27, 1979.

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

On appeal, counsel asserts that the applicant's parents mistakenly provided an incorrect birth date for the applicant when she immigrated to the United States. Counsel asserts that the applicant obtained a copy of her correct birth certificate, and that she attempted to correct her erroneous date of birth on her N-400, Application for Naturalization prior to her naturalization as a U.S. citizen. Counsel asserts that the applicant's request for a birth date correction was denied, and that the applicant allowed the incorrect date to remain on her Certificate of Naturalization because she believed she would otherwise not be allowed to naturalize.

Section 338 of the Act provides the relevant statutory authority relating to the contents of a Certificate of Naturalization. Specific regulations regarding the execution and issuance of Certificates of Naturalization are contained in Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 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 a birth certificate reflecting that the applicant's birth date is October 27, 1979. The record additionally reflects the applicant stated on her Form N-400, Application for Naturalization that her birth date was October 27, 1979. The record also reflects, however, that the applicant stated her birth date was December 16, 1974 for all U.S. immigrant visa purposes, and the record contains birth certificate information reflecting that the applicant's date of birth is December 16, 1974. The record reflects further that on November 24, 1999, the Immigration and Naturalization Service (Service, now U.S. Citizenship and Immigration Services, CIS) denied a Form I-90, Application To Replace Alien Registration Card filed by the applicant, based on the finding that the applicant had, under oath, provided a December 16, 1974 birth date to U.S. Department of State and/or Immigration and Naturalization Service personnel on various occasions during her U.S. immigration process, and that she had failed to submit evidentiary documentation necessary to conclusively establish her alleged new date of birth. The record indicates that CIS came to a similar conclusion in not accepting the date of birth provided by the applicant on her N-400 naturalization application. It is additionally noted that school graduation evidence contained in the record reflects that the

applicant graduated from high school in June 1993, and from college in September 1996. An October 1979 birth date would indicate that the applicant was 13 years old at the time of her high school graduation, and that she was 16 years old when she graduated from college. A December 1974 birth date, on the other hand, would indicate that the applicant was 18 years old at the time of her high school graduation and 21 years old when she graduated from college.

The AAO finds that the cumulative evidence contained in the record fails to demonstrate that the applicant's Certificate of Naturalization contains Service (CIS) related clerical errors. Accordingly, the AAO finds that there are no provisions under 8 C.F.R. § 338.5 to justify or 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 corrections to the applicant's certificate of citizenship. 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).¹

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 [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.

ORDER: The appeal is dismissed.

¹ The AAO notes that the record contains a copy of a "Petition for Correction of Date of Birth on Certificate of Naturalization", to be filed before the U.S. District Court for the Central District of California. The petition contains no indication that it was filed with the court, however, and the record does not contain a court order relating to the petition.