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U.S. Citizenship
and Immigration
Services

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FILE:

Office: PHOENIX, AZ

Date:

JAN - 2 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Phoenix, Arizona (Las Vegas, Nevada). The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the matter remanded to the district director for action consistent with this decision.

The applicant is a native of Laos 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 January 27, 1951 to January 27, 1944.

The district 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 District Director*, at 2, dated July 14, 2006.

On appeal, counsel asserts that the Form N-565 was denied even though a court order permitting amendment of his Certificate of Naturalization was submitted. *Form I-290B*, at 2, received August 11, 2008.

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.

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 United States Citizenship and Immigration Services (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.

The record includes a court order from the United States District Court, District of Nevada, dated February 15, 2006, which orders that the applicant's Certificate of Naturalization be amended to reflect January 27, 1944 as his correct date of birth. The United States District Court, District of Nevada has jurisdiction over the applicant's naturalization proceedings. As such, the district director must amend the applicant's Certificate of Naturalization to reflect January 27, 1944 as his correct date of birth.

ORDER: The district director's decision is withdrawn and the matter is remanded to the district director for action consistent with this decision.