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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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JUN 11 2009

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

[REDACTED]

APPLICATION:

Application for Replacement Naturalization/Citizenship Document under Section 343
of the Immigration and Nationality Act, 8 U.S.C. § 1454.

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.

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).

John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. He seeks to have a new Certificate of Naturalization issued to him.

The Director reviewed the applicant's record and determined that the applicant had failed to establish that he is a citizen of the United States or that any Certificate of Citizenship or Certificate of Naturalization was previously issued to him, and the application was denied accordingly. *Decision of the Director*, at 1-2, dated November 21, 2008.

On appeal, counsel asserts that the applicant attended a March 21, 1997 public oath ceremony, he is entitled to a Certificate of Naturalization based on his U.S. citizen status, there is no legal requirement that a foreign national respond to a notice to appear from United States Citizenship and Immigration Services (USCIS) in order to properly take the oath of allegiance, it is immaterial that the applicant did not receive a call-in notice to appear at the ceremony at which he took the oath, and the denial of his naturalization application had no legal effect as he became a U.S. citizen when he took the oath of allegiance at the public oath ceremony. *Form I-290B*, at 2, received December 23, 2008. The record includes, but is not limited to, counsel's brief, an April 20, 1998 Form G-2 memorandum, and the applicant's naturalization case history, M-180, a September 15, 1998 letter to the Nebraska Service Center, a copy of the applicant's resident alien card, and a signed oath of allegiance, dated January 28, 1997.

Section 343 of the Act provides the statutory authority relating to Documents and Copies Issued by the Attorney General. It states in pertinent part that:

- (a) If any certificate of naturalization or citizenship issued to any citizen or any declaration of intention furnished to any declarant is lost, mutilated, or destroyed, the citizen or declarant may make application to the Attorney General for a new certificate or declaration...

The regulation at 8 C.F.R. § 343a.1 states in pertinent part that:

- (a) Lost, mutilated, or destroyed naturalization papers. A person whose declaration of intention, certificate of naturalization, citizenship, or repatriation, or whose certified copy of proceedings under the act of June 25, 1936, as amended, or under section 317(b) of the Nationality Act of 1940, or under 324(c) of the Immigration and Nationality Act, or under the provisions of any private law, has been lost, mutilated, or destroyed, shall apply on the Form N-565 for a new paper in lieu thereof.

The record reflects that the applicant failed to appear for his public oath ceremony on January 28, 1997 and February 19, 1997, claimed to have taken his oath on March 21, 1997 at his mother's oath ceremony, and had his application denied on February 19, 1999 for failure to submit new fingerprints. Counsel cites the M-180 which states, "...the swearing in ceremony that you attended in March 1997 does not count because we did not send you a notice to appear." *M-180*, dated February 26, 1999. Counsel cites the naturalization case history which states, "The subject claimed to have taken the oath with his mother...and wanted his certificate of naturalization...Certificate number [REDACTED] was typed...A decision was reached that the old pictures

could not be used and that the subject should be instructed to submit new photos. The certificate would than [sic] be finalized [sic] and certified mailed to the subjects address.” *Applicant’s Naturalization Case History*, at 1, undated. Counsel states that Certificate number [REDACTED] would have been issued to the applicant on March 21, 1997, but for the need for new photographs, and that the legacy Immigration and Naturalization Service (INS) would not have agreed to prepare and issue the certificate if he had not attended the public oath ceremony. *Brief in Support of Appeal*, at 4, dated December 22, 2008. Counsel states that INS failed to issue the naturalization certificate for purely technical reasons, this does not mean that the applicant did not become a U.S. citizen when he took the oath of allegiance, and INS took his alien registration card when the oath was administered to him. *Id.* at 4. Counsel states that there is no legal requirement that a foreign national must respond to a notice to appear issued by USCIS in order to properly take the oath of allegiance, the applicant appeared in person at a time and place designated by INS and the June 17, 1999 denial had no legal effect as he had already become a citizen when he attended the public oath ceremony. *Id.* at 5-6, 8.

The AAO notes that the M-180 states, “You have not been sworn in and will not ever be sworn in until we have valid fingerprints...You now have 87 days from February 19 to have your prints taken...If you have your prints taken, we can call you in for your ceremony once they have cleared.” *M-180*. In regard to public oath ceremonies, 8 C.F.R. § 337.2 states that “...Such ceremony shall be held at a time and place designated by the Service.” The time and place of the ceremony is designated on the call-in notice, Form G-56, and the subject was not issued one of these for March 21, 1997.

A review of the record reflects that the applicant attended his mother’s ceremony, but he did not attend a ceremony at a time and place specifically designated for him pursuant to 8 C.F.R. § 337.2. As such, the AAO finds that there is no evidence in the record that the applicant was naturalized and granted a Certificate of Naturalization, which has been lost, mutilated or destroyed. Therefore, the applicant has not established eligibility for a new Certificate of Naturalization under section 343 of the Act.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in this proceeding.

ORDER: The appeal is dismissed.