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



U.S. Citizenship
and Immigration
Services

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MAY 07 2009

FILE:

Office: TEXAS SERVICE CENTER

Date:

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.

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. Glissom

Acting Chief, Administrative Appeals Office

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

The applicant is a native of Chile 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 country of former nationality from Chile to Spain.

The director determined that a correction of the applicant's country of former nationality on his Certificate of Naturalization was not justified and the application was denied accordingly. *Decision of the Director*, at 1, dated October 21, 2008.

On appeal, counsel asserts that the applicant believed his place of birth was Chile all of his life; he filed the Form N-565 after he was advised by his mother that he was born in Madrid, Spain; his mother did not disclose the truth about his place of birth due to fear of persecution based on the applicant's Jewish heritage; and he obtained stamps from several government entities which act the same as a birth certificate in recognizing Spain as his country of birth. *Letter from Counsel*, at 1-2, dated November 20, 2008. The record includes a sworn declaration from the applicant's mother that the applicant was born in Spain, with stamps from United States, Chilean and Spanish officials.

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.

Based on the evidence contained in the record, the applicant has not established that his Certificate of Naturalization contains Immigration and Naturalization Service (now United States Citizenship and Immigration Services (USCIS)) related clerical errors, and the AAO finds that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in the Form N-400, Application for Naturalization. The AAO observes that the record also contains other immigration-related documents indicating the applicant's country of former nationality as Chile, including a Form I-485, Application for Permanent Residence; a Form I-765, Application for Employment Authorization; a Form G-325A, Biographic Information; a Form I-130, Petition for Alien Relative; and a Form I-693, Medical Examination of Aliens Seeking Adjustment of Status. Accordingly, the Director correctly found that there are no provisions that justify or allow USCIS to correct the applicant's country of former nationality on his Certificate of Naturalization.

Because there are no clerical errors in the present matter, USCIS has no statutory authority to correct the applicant's country of former nationality on his Certificate of Naturalization, 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 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.

Based on the reasoning set forth above, the appeal will be dismissed without prejudice to the applicant's submission of a request to a U.S. Federal Court in accordance with the Act and Regulations.

ORDER: The appeal is dismissed.