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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

E3

FILE:

[REDACTED]  
SRC 10 037 50169

Office

[REDACTED]

Date:

**AUG 19 2010**

IN RE:

[REDACTED]

APPLICATION:

Application for Replacement Naturalization Document under Section 338 of the  
Immigration and Nationality Act, 8 U.S.C. § 1449.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

[REDACTED]

Chief, Administrative Appeals Office



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

[REDACTED] s. She seeks to have her 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 her date of birth from April 3, 1944, to April 3, 1942.

The director reviewed the applicant's record and determined that a correction to her Certificate of Naturalization was not justified. *See Decision of the Director*, dated Dec. 30, 2009. The application was denied accordingly. *Id.* On appeal, the applicant asserts that her Certificate of Naturalization contains an erroneous date of birth. *See Form I-290B, Notice of Appeal*, filed Feb. 1, 2010. In support of this assertion, she submits several documents indicating her date of birth as April 3, 1942.

Section 338 of the Act provides the statutory authority relating to the contents of a Certificate of Naturalization. In addition, the regulations regarding the execution and issuance of Certificates of Naturalization 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 name or date of birth at the time of the naturalization.

The AAO acknowledges that the record includes the applicant's marriage certificate, a Polish passport, a U.S. visa, and a Form I-94 Arrival – Departure Record, which state the applicant's date of birth as April 3, 1944. However, the applicant's birth certificate indicates that on April 7, 1997, a district court in Poland changed the applicant's date of birth from April 3, 1944, to April 3, 1942, to reflect the applicant's proper date of birth. [REDACTED]

Here, the applicant has established that her Certificate of Naturalization does not conform to the facts shown on her application for naturalization. Specifically, the applicant originally stated on her Form N-400, Application for Naturalization that her date of birth is April 3, 1942, the same date of birth on her Form I-551, Permanent Resident Card. Additionally, the AAO observes that the record contains numerous other documents with the April 3, 1942 date of birth, including: the applicant's corrected birth certificate; a Form I-797C Receipt Notice; a Form I-485 Application to Adjust Status; a Biographic Information Form (Form G-325A); a Medical Examination (Form I-693); an



Immunization Record; a Memorandum of Creation of Record of Lawful Permanent Residence (Form I-181); a U.S. Customs and Border Protection boarding letter; and a Petition for Alien Relative (Form I-130).

Because the applicant stated her birth date as April 3, 1942, on her naturalization application and the majority of documents in her file, including her record of permanent residence, also identify April 3, 1942 as her date of birth, a correction of her naturalization certificate is justified pursuant to the regulation at 8 C.F.R. § 338.5(a). Accordingly, the appeal will be sustained and this matter will be returned to the director for the issuance of a Certificate of Naturalization with her correct date of birth.

**ORDER:** The appeal is sustained. The matter is returned to the Texas Service Center for issuance of a corrected Certificate of Naturalization.

