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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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[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: **AUG 13 2010**

IN RE:

[REDACTED]

APPLICATION:

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

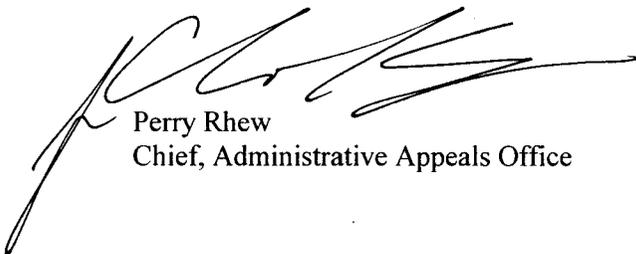
ON BEHALF OF APPLICANT:

[REDACTED]

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,



Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native of Mexico and a naturalized citizen of the United States. 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 December 6, 1936, to November 6, 1936.

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 Jan. 27, 2010. 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. 9, 2010. In support of this assertion, she submits a letter and numerous documents indicating her date of birth as November 6, 1936.

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 a copy of a birth certificate which states the applicant's date of birth as December 6, 1936. *See Civil Registration for Carmen Chairez* [sic], dated June 22, 1957. However, the applicant claims that the document is in error, and that she has always used the November 6, 1936 birth date.

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 November 6, 1936, 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 November 6, 1936 date of birth, including: a birth certificate for [REDACTED] dated December 11, 2008; a California Senior Citizen Identification Card; a California Benefits Identification Card; a Metropolitan Transit System Card;



an Application by a Lawful Permanent Resident for an Alien Registration Receipt Card (Form I-90); a Form I-90 Processing Sheet (Form I-468); a Marriage Certificate; a Route Slip (Form G-360); an Application for Order to Show Cause (Form I-265); a Record of Deportable Alien (Form I-213); a Detainer/Notice of Action (Form I-247), dated Dec. 11, 1986; an Application for Verification of Lawful Permanent Residence of an Alien (Form I-550); an Arrival - Departure Record; and an Application for Immigrant Visa and Alien Registration Form.

The AAO notes that the record contains several documents indicating a November 5, 1936 date of birth, including: a U.S. Bureau of Prisons Staff Summary; an Application for Advance Permission to Return to Unrelinquished Domicile (Form I-191); a Detainer/Notice of Action (Form I-247), dated October 10, 1984; and a Report of Alien Person Institutionalized (Form G-340). However, the November 5, 1936 date of birth appears to be the result of a clerical error.

Because the applicant stated her birth date as November 6, 1936, on her naturalization application and the majority of the documents in her file, including her record of permanent residence, also identify November 6, 1936 as her date of birth, a correction of her naturalization certificate is justified pursuant to the regulation at 8 C.F.R. § 338.5. 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 Nebraska Service Center for issuance of a corrected Certificate of Naturalization.

