

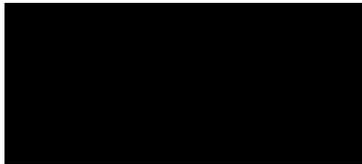
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



E3

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date: **AUG 16 2010**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for a Replacement Citizenship Document (Form N-565)

ON BEHALF OF APPLICANT:

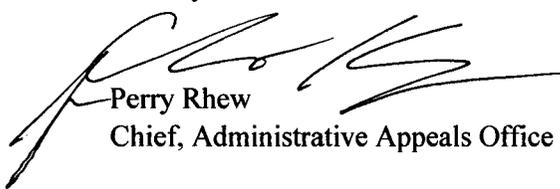
SELF-REPRESENTED

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
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 The director's decision will be withdrawn in part. The appeal will be dismissed.

The applicant is a native of Vietnam who acquired U.S. citizenship through his adopted parents. The applicant seeks to amend his certificate of citizenship to correct his name and date of birth.

The Service Center Director determined that the date of birth in the applicant's certificate of citizenship conforms to the date of birth indicated in his immigration file. The director further noted that the applicant failed to establish that a clerical error was made in preparing his certificate. The director cited the regulation at 8 C.F.R. § 338.5(a). The application was denied accordingly.

On appeal, the applicant, through his parents, maintains that his name and date of birth were changed upon his re-adoption in the United States. *See* Statement of the Applicant's Parent. The applicant notes that his name has been changed to [REDACTED] by order of the California Superior Court. *Id.* Further, he maintains that his date of birth is [REDACTED] and not [REDACTED]. *Id.*

Section 343 of the Act, 8 U.S.C. § 1454, and the corresponding regulations at 8 C.F.R. § 343a provide no authority to change the date of birth on a certificate of citizenship. At most, the statute and regulations allow for issuance of a replacement certificate if the original document has been lost, mutilated or destroyed; or if a citizen's name has changed after naturalization due to marriage or a court order. *See* Section 343(a), (c) of the Act; 8 C.F.R. § 343a.1. The applicant in this case is entitled to a replacement certificate as the record shows that his name was changed by order of the California Superior Court after the applicant's certificate of citizenship was issued. The portion of the director's decision to the contrary is hereby withdrawn.

Nonetheless, the appeal cannot be sustained because the second ground for denial of the application has not been overcome: U.S. Citizenship and Immigration Services (USCIS) lacks the authority to change the applicant's date of birth on his certificate of citizenship. Section 338 of the Act, 8 U.S.C. § 1449, and the regulations promulgated thereunder, at 8 C.F.R. § 338.5, permit the correction of a certificate of naturalization in certain limited circumstances, but the applicant in this case did not naturalize, he acquired citizenship through his adoptive parents and was accordingly issued a certificate of citizenship, not naturalization. Even if the regulations pertaining to the correction of naturalization certificates were extended to certificates of citizenship, the applicant would not meet the requirements for a corrected certificate.

The regulation at 8 C.F.R. § 338.5 provides, in pertinent part:

- (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.

In this case, the record reveals no nonconformity or clerical error in the preparation of the applicant's certificate. The applicant's Form I-600 orphan petition, and all the accompanying documents list November 22, 2006 as his date of birth, the same date stated on his certificate of citizenship.

On appeal, the applicant's parents assert that [REDACTED] was the date that the applicant was found abandoned at a Vietnamese hospital and that his actual date of birth is [REDACTED]. The applicant's parents submit a letter from their pediatrician who states that based on her medical examination of the applicant, [REDACTED] is a more accurate date of birth for the applicant. The applicant's parents fail, however, to demonstrate that the date of birth stated on the applicant's certificate of citizenship did not conform to his immigration record at the time it was issued or that USCIS made a clerical error in the preparation of the certificate. All of the documents in the applicant's file prior to the issuance of his certificate state his date of birth as [REDACTED].

As noted above, neither the Act nor the regulations, provide any authority for USCIS to change the date of birth on a certificate of citizenship. The applicant's appeal must therefore be dismissed.

ORDER: The appeal is dismissed.