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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



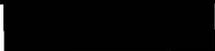
**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: NEBRASKA SERVICE CENTER

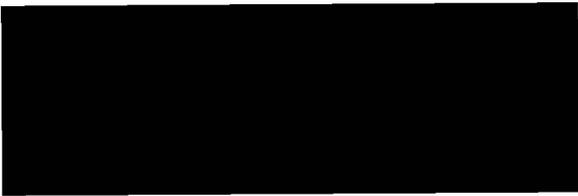
Date: JAN 04 2010

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.

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 The Director's decision will be withdrawn and the matter remanded to the Director for action consistent with this decision.

The applicant is a native of Afghanistan 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 of his date of birth from March 15, 1955 to March 15, 1947.

The Director determined that a correction of the applicant's date of birth on his Certificate of Naturalization was not justified and the application was denied accordingly. *Decision of the Director, at 2, dated July 29, 2009.*

On appeal, counsel asserts that an accountant prepared the applicant's N-400 application and wrote the incorrect date of birth on the form, the applicant presented proof of his correct date of birth at his naturalization interview, the interviewing officer accepted this proof and he stated that the correct date of birth would be reflected on the applicant's naturalization certificate. *Counsel's Brief, at 2, dated August 13, 2009.*

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.

- (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 own name or date of birth at the time of naturalization.

The record contains a birth record for the applicant issued by the Consulate General of Afghanistan-Los Angeles that states his date of birth as March 15, 1947.¹ A review of the applicant's Form N-400, Application for Naturalization, finds that, at his March 3, 2008 naturalization interview, the

¹ The AAO notes that the March 15, 1955 date of birth found in the applicant's immigration documents is based on affidavits from the applicant, his mother and other relatives. The record contains a September 4, 1986 statement from the Afghan Community in America that indicates birth certificates were, at that time, unavailable from the Census Department in Afghanistan as a result of the Soviet invasion.

applicant's date of birth was changed from March 15, 1955 to March 15, 1947 and that the latter is the date of birth that he claimed under oath. *Applicant's Form N-400*, at 2, approved May 29, 2008.

Based on the evidence contained in the record, the applicant has established that his Certificate of Naturalization contains an Immigration and Naturalization Service (now United States Citizenship and Immigration Services (USCIS)) related clerical error. The AAO finds that the information on the applicant's Certificate of Naturalization does not conform to the facts as set forth in his Form N-400. Accordingly, the Director incorrectly found that there are no provisions under 8 C.F.R. § 338.5 to justify or to allow for a USCIS correction of the applicant's date of birth on his Certificate of Naturalization. The regulation at 8 C.F.R. § 338.5(a) permits this change.

As such, the matter will be returned to the Director for action consistent with this decision.

ORDER: The Director's decision is withdrawn and the matter is remanded to the Director for action consistent with this decision.