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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: **OCT 28 2010**

IN RE:

Applicant:

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.

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 appeal will be sustained.

The applicant is a native of Vietnam who derived U.S. citizenship upon her mother's naturalization. The applicant seeks to amend her certificate of citizenship, citing 8 C.F.R. § 338.5, claiming that the date of birth listed on the certificate is incorrect.

The Service Center Director determined that the applicant failed to establish that a clerical error was made in preparing her certificate of citizenship, and that the date of birth listed on the certificate conforms to the date of birth indicated on her Form N-600, Application for Certificate of Citizenship. The application was denied accordingly.

On appeal, the applicant maintains that the date of birth listed on her certificate of citizenship is incorrect. *See* Statement of the Applicant. The applicant states that her date of birth is [REDACTED] and not [REDACTED] as indicated on her certificate. *Id.* The applicant explains that her birth certificate was issued in error and has since been corrected. *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. 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 statute and regulations governing certificates of citizenship do not address the possibility of errors made in the preparation of the certificate and the need for correction of such mistakes. 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. Where warranted, these regulations may be extended to certificates of citizenship.

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 indicates that a clerical error was made in the preparation of the applicant's certificate of citizenship because the date of birth stated on her certificate of citizenship does not conform to the date of birth consistently stated in her immigration file, including her records of admission and lawful permanent residency. The records of the applicant's admission as a refugee and her subsequent adjustment to lawful permanent residency list November 9, 1966 as her date of birth. Her file, however, contains a copy of a 1972 Vietnamese Court Judgment submitted in lieu of the applicant's birth certificate and declaring her date of birth to be [REDACTED]. On appeal, the applicant explains that her mother obtained the court judgment in 1981 and realized that the document incorrectly stated her birth year as 1969, but that she was unable to obtain a corrected document until 1988. On appeal, the applicant submits a copy of her Vietnamese birth certificate issued on [REDACTED]. The certificate states that the applicant was born on [REDACTED] and that her birth was registered on [REDACTED]. In addition, U.S. Citizenship and Immigration Services (USCIS) records show that the applicant's younger brother was born on [REDACTED]. As the applicant and her brother have the same mother, it would have been impossible for the applicant to have been born on [REDACTED].

On appeal, the applicant has established that the date of birth on her certificate of citizenship is erroneous. The record demonstrates that a clerical error was made in the preparation of the applicant's certificate because the date of birth stated on the certificate does not correspond to the date of birth repeatedly and consistently stated in her immigration records. Accordingly, the appeal will be sustained and the matter will be returned to the service center for issuance of a replacement certificate stating the applicant's correct date of birth as November 9, 1966.

ORDER: The appeal is sustained. The matter is returned to the Nebraska Service Center for issuance of a replacement certificate of citizenship stating the applicant's correct date of birth.