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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE:
JUL 22 2011

Office: TEXAS SERVICE CENTER

FILE:

IN RE:

APPLICATION: Application for Replacement Citizenship Document

ON BEHALF OF PETITIONER:

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 the \$630 fee. 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 Acting Director, Texas Service Center, denied the Application for Replacement Citizenship Document (N-565). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Greece who seeks a new certificate of citizenship, claiming that the date of birth listed on the original certificate is not correct. The director determined that the applicant failed to establish that a clerical error was made in preparing the certificate of citizenship, and denied the application accordingly. On appeal, the applicant contends that the date of birth listed on her certificate of citizenship, May 6, 1939, does not conform to the date of birth listed on her birth certificate, May 4, 1939. The applicant believes that a clerical error was made when the certificate was prepared.

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 a certificate and the need for correction of such mistakes. *See* Section 341 of the Act, 8 U.S.C. §1452; 8 C.F.R. § 341. 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.

Based on the evidence in the record, the applicant has not established that her Certificate of Citizenship contains clerical errors attributable to U.S. Citizenship and Immigration Services (USCIS). The applicant's Certificate of Citizenship, signed by the applicant and her father, indicates

that her date of birth is [REDACTED].

The AAO acknowledges that the record includes a copy of a birth certificate reporting her date of birth as [REDACTED], and a copy of a social security print out with two entries related to the applicant; one showing the applicant's date of birth to be [REDACTED] and the other showing her date of birth to be [REDACTED]. However, because the applicant has provided no evidence that there was a clerical error in the preparation of the certificate, USCIS has no authority to change the applicant's Certificate of Citizenship. *See e.g.*, 8 C.F.R. § 338.5.

Only a federal court has the authority to order that an amendment be made to the applicant's Certificate of Citizenship, after a hearing in which the Government is provided an opportunity to present its position on the matter. 8 C.F.R. § 334.16(b). *See, e.g., Hussain v. USCIS*, 541 F.Supp. 2d 1082, 1084-87 (D.Minn. 2008) (explaining the applicable procedural requirements and standard of proof).

Specifically, 8 C.F.R. § 334.16(b) states in pertinent part:

Whenever an application is made to the court to amend a petition for naturalization after final action thereon has been taken by the court, a copy of the application shall be served upon the district director having administrative jurisdiction over the territory in which the court is located, in the manner and within the time provided by the rules of court in which [the] application is made. No objection shall be made to the amendment of a petition for naturalization after the petitioner for naturalization has been admitted to citizenship if the motion or application is to correct a clerical error arising from oversight or omission. A representative of the Service may appear at the hearing upon such application and be heard in favor of or in opposition thereto. When the court orders the petition amended, the clerk of court shall transmit a copy of the order to the district director for inclusion in the Service file.

Accordingly, the appeal will be dismissed without prejudice to the filing of an appropriate action in federal court.

ORDER: The appeal is dismissed.