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

(b)(6)

U.S. Citizenship and Immigration Services

Date: FEB 19 2013 Office: TEXAS SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for Replacement Naturalization/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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant seeks to correct a certificate of naturalization pursuant to sections 338 and 343 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1449 and 1454, claiming that the date of birth listed on the certificate is incorrect.

The director determined that the certificate of naturalization reflects the applicant's true and correct date of birth, as indicated in his Form N-400, Application for Naturalization and immigration records. The application was denied accordingly.

On appeal, the applicant maintains that the date of birth listed on his certificate is incorrect. The applicant's certificate of naturalization indicates that his date of birth is November 21, 1957. The applicant's Form N-400, Application for Naturalization, and his immigrant visa and alien registration form also list November 21, 1957 as the applicant's date of birth. The applicant claims that he was born on November 23, 1957.

Section 338 of the Act provides the statutory authority relating to the contents of a certificate of naturalization. The specific regulations regarding the execution and issuance of certificates of naturalization are contained in 8 C.F.R. § 338.5, and provide, in pertinent 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.
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> (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.

As noted above, November 21, 1957 is listed as the applicant's date of birth on his naturalization application and naturalization certificate, and was verified under oath by the applicant during the naturalization process. The date of birth on the applicant's certificate of naturalization therefore conforms to the facts as set forth in the applicant's record. Section 338 of the Act does not provide authority to U.S. Citizenship and Immigration Services to change a certificate of citizenship to reflect a date of birth other than that shown on the naturalization application where,

as here, there is no evidence of a clerical error. *See* 8 C.F.R. § 338.5. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.