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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: ST. PAUL, MINNESOTA

Date: MAR 26 2007

IN RE:

Applicant:



APPLICATION: Application for Replacement Naturalization/Citizenship Document under Section 338 of the Immigration and Nationality Act, 8 U.S.C. § 1149.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, St. Paul, Minnesota. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Liberia and a naturalized citizen of the United States. He seeks to have his Certificate of Naturalization corrected under section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, to reflect a change in his date of birth from September 2, 1979 to June 13, 1973.

The District Director reviewed the applicant's record and determined that a correction of his Certificate of Naturalization was not justified. In her decision the District Director noted that the applicant had stated his date of birth was September 2, 1979 during the naturalization process. The application was denied accordingly.

On appeal, the applicant asserts that his Certificate of Naturalization contains an erroneous date of birth and that September 2, 1979 is his brother's date of birth. The applicant submits a photocopy of his Form N-400 in which he listed June 13, 1973 as his date of birth. The AAO acknowledges the June 13, 1973 date of birth initially listed on the applicant's N-400 and, his explanation for its amendment to September 2, 1979. Nevertheless, the N-400 was amended to list September 2, 1979 as the applicant's date of birth and the applicant signed the amended version.

Section 338 of the Act provides the statutory authority relating to the contents of a Certificate of Naturalization. In addition, the specific regulations regarding the execution and issuance of Certificates of Naturalization are contained in 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.

Based on the evidence contained in the record, the applicant has not established that his Certificate of Naturalization contains Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) related clerical errors, and the AAO finds that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in his application for that document. The AAO also notes that with the exception of the Form N-400 discussed above and the Form I-90, Application to Replace Permanent Resident Card, filed by the applicant on May 30, 2006, the September 2, 1979 date of birth is listed on all documents submitted to CIS prior to the applicant's naturalization. These documents include a Form I-485, Application to Register Permanent Resident or Adjust Status, signed by the applicant on October 18, 2001; a Form G-325A, Biographic Information sheet, also signed by the applicant on October 18, 2001; and a Petition for Name Change signed by the applicant on April 19, 2006. Accordingly, the District Director

correctly found that there are no provisions under 8 C.F.R. § 338.5 to justify or to allow for a CIS correction to the applicant's Certificate of Naturalization.

Because there are no clerical errors in the present matter, CIS has no statutory authority to make any corrections to the applicant's certificate of citizenship, and only a federal court with jurisdiction over the applicant's naturalization proceedings has the authority to order that an amendment be made to the applicant's Certificate of Naturalization, after a hearing in which the Government is provided an opportunity to present its position on the matter. Such a hearing ensues pursuant to a motion to the court for an Order Amending a Certificate of Naturalization. *See* 8 C.F.R. § 334.16(b). *See also, Chan v. Immigration and Naturalization Service*, 426 F. Supp. 680 (1976) and *Varghai v. Immigration and Naturalization Service*, 932 F. Supp. 1245 (1996).

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

[W]henver 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 [CIS] 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.

Based on the reasoning set forth above, the appeal will be dismissed without prejudice to the applicant's submitting a request to a U.S. Federal Court in accordance with the Act and Regulations.

**ORDER:** The appeal is dismissed.