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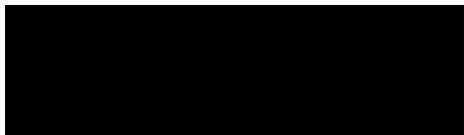
U.S. Department of Homeland Security  
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FILE:



Office: NEBRASKA SERVICE CENTER

Date: JUN 17 2000

IN RE:

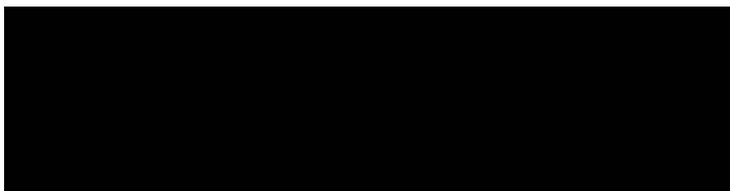
Applicant:



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:



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 Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of China 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 June 18, 1945 to June 18, 1942.

The Director reviewed the applicant's record and determined that a correction to his certificate of naturalization was not justified. In his decision, the Director noted that the applicant had claimed the date of birth on the certificate at the time of naturalization. The application was denied accordingly. *Decision of the Director*, dated January 29, 2008.

On appeal, the applicant asserts that his Certificate of Naturalization contains an erroneous date of birth. In support of his claim, the applicant has submitted a Taiwan household registration and a certificate from [REDACTED] Director of Travel Division, Taipei Economic and Cultural Office in Los Angeles, dated June 19, 2003 stating the applicant's date of birth as June 18, 1942. The applicant also submits a statement from Immigration Judge [REDACTED], sister of the applicant, stating the applicant was born in 1942.

On appeal, counsel contends that the legacy Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) previously corrected the date of birth on the Certificate of Naturalization issued to the applicant's sister and that it is strange that the Federal Government would not also correct the applicant's naturalization certificate. Counsel recommends that CIS review the immigration record of the applicant's sister as she requested the correction of her date of birth on the same grounds as the applicant.

While the AAO acknowledges counsel's statements, it notes that each application filing is a separate proceeding with a separate record and that CIS is limited to the information contained in that record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d). Accordingly, the adjudication of the Form N-565, Application for Replacement Naturalization/Citizenship Document, that counsel indicates was filed by the applicant's sister may not be considered in this proceeding. The AAO is limited to the record before it in reaching its decision.

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 that the information on the applicant's Certificate of Naturalization conforms to the facts as set forth in his application for that document, the Form N-400. The AAO observes that the applicant also submitted other forms to CIS with the June 18, 1945 date of birth, which include a Form N-405, Petition for Naturalization; a Fingerprint Form; a Form G-325, Biographic Information; a Form FS-511, Immigrant Visa and Alien Registration; a Form FS-398, Medical Examination of Visa Applicants; a Form FS-510; and a Form I-130, Classify Status of Alien Relative for Issuance of Immigrant Visa. The record also contains a Registration of Persons Ordinance 1960; a Certificate from the Government of the Ryukyu Islands; and a Statutory Declaration with the June 18, 1945 date of birth. Accordingly, the 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 naturalization, 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]henever 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.