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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**



E4

FILE:



Office: NEBRASKA SERVICE CENTER

Date APR 29 2009

IN RE:



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.

John F. Grissom

Acting 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 and the matter will be returned to the Director for further processing.

The applicant is a native of Mexico 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 name from [REDACTED] to [REDACTED].

The Director reviewed the applicant's record and determined that he was not eligible for a new certificate of naturalization. In his decision the Director noted that the name on the applicant's Application for Naturalization, which he affirmed to be true and correct, was the name that was printed on his certificate. The Director denied the application accordingly.

On appeal, the applicant states that on the Form N-400, Application for Naturalization he correctly stated his name to be [REDACTED] and submits copies of his driver's license, social security card, Mexican citizenship document, and financial records showing his name to be [REDACTED].

Section 338 of the Act provides the statutory authority relating to the correction 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 established that his Certificate of Naturalization contains Immigration and Naturalization Service (now United States Citizenship and Immigration Services (USCIS)) related clerical errors. The AAO finds that the information on the applicant's Certificate of Naturalization does not conform to the facts as set forth in his Form N-400, Application for Naturalization. The name to which the applicant swore on his Form N-400, [REDACTED], is not the name that appears on his Certificate of Naturalization. Therefore, the Director incorrectly found that there are no provisions under 8 C.F.R. § 338.5 to

justify or allow for a USCIS correction to the applicant's Certificate of Naturalization. Because there are clerical errors in the present matter, USCIS has the statutory authority to make corrections to the applicant's Certificate of Naturalization.

Based on the reasoning set forth above, the appeal will be sustained and the matter will be returned to the Director for further processing.

ORDER: The appeal is sustained and the matter will be returned to the Director for further processing.