



U.S. Citizenship
and Immigration
Services

[REDACTED]

E4

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date AUG 24 2009

IN RE:

[REDACTED]

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:

[REDACTED]

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.

A handwritten signature in cursive script, appearing to read "John F. Grissom".

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.

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 date of birth from December 27, 1949 to December 27, 1946.

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 date of birth on the applicant's Certificate of Naturalization had been determined to be his correct date of birth by the office issuing the certificate. The application was denied accordingly.

On appeal, counsel asserts that the Certificate of Naturalization for the applicant contains an erroneous date of birth and that his Form N-400, Application for Naturalization, was submitted with the December 27, 1946 date of birth.

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 established that the date of birth shown on his Certificate of Naturalization does not conform to the facts as set forth in his Form N-400, Application for Naturalization. The AAO observes that the Form N-400 approved by United States Citizenship and Immigration Services (USCIS) lists the applicant's date of birth as December 27, 1946. The AAO notes that the record contains other documentation with the December 27, 1946 date of birth, which include a denied Form N-400; a Form N-649, Certificate Preparation Sheet and Oath Declaration; a Mexican birth certificate; a Mexican passport; a California identification card; statements from friends; statements from the applicant; and FBI sheets. The AAO notes that the record includes a Form N-649, Certificate Preparation Sheet and Oath Declaration; an FBI sheet; a

Permanent Resident Card; California identification cards; a Form I-90, Application to Replace Permanent Resident Card; police clearance letters; a police arrest report; a police criminal history transcript; a safety consultant service completion certificate; and a Form OF-157, Medical Examination of Applicants for United States Visas with the December 27, 1949 date of birth. The AAO also notes that the record includes a Form I-90, Application to Replace Permanent Resident Card; a Resident Alien Card; FBI sheets; an unapproved Form N-400; a Form N-649, Certificate Preparation Sheet and Oath Declaration; and an OF-155A, Immigrant Visa and Alien Registration with a December 24, 1949 date of birth. The record also includes a Form I-134, Affidavit of Support listing the applicant's age as 42 in 1992. Nevertheless, the Director erred in finding there are no provisions under 8 C.F.R. § 338.5 to justify or to allow for a USCIS correction to the applicant's Certificate of Naturalization.

Because the date of birth on the applicant's Certificate of Naturalization does not conform to the date of birth shown on the applicant's Form N-400, USCIS has statutory authority to make the correction to the applicant's Certificate of Naturalization.

Based on the reasoning set forth above, the appeal will be sustained and the case remanded to the Nebraska Service Center to issue the applicant a new Certificate of Naturalization with the December 27, 1946 date of birth.

ORDER: The appeal is sustained and the case remanded to the Nebraska Service Center to issue the applicant a new Certificate of Naturalization with the December 27, 1946 date of birth.