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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

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FILE: Office: NEBRASKA SERVICE CENTER Date: JUL 1 4 2009

IN RE: [redacted]

APPLICATION: Application for Replacement Naturalization/Citizenship Document under Section 338 of the Immigration and Nationality Act, 8 U.S.C. § 1449.

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

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 dismissed.

The applicant is a native of Mexico and a naturalized citizen of the United States. He seeks to have his Certificate of Naturalization, issued under section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, corrected in order to reflect a change in his date of birth from April 6, 1946 to April 6, 1947.

The Director determined that a correction of the applicant's date of birth on his Certificate of Naturalization was not justified and the application was denied accordingly. *Decision of the Director*, at 1-2, dated February 26, 2009.

On appeal, the applicant asserts that his elders handled his paperwork, he did not possess his birth certificate when he swore to his date of birth under oath at the time of naturalization, and the problem came to light when he applied for social security disability. *Form I-290B and Attachment*, received March 20, 2009.

Section 338 of the Act provides the statutory authority related to the contents of a Certificate of Naturalization. In addition, the specific regulations regarding the correction of Certificates of Naturalization are located at 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 United States Citizenship and Immigration Services (USCIS)) 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 the Form N-400, Application to File Petition for Naturalization. The AAO observes that the record also contains other immigration-related documents listing the applicant's date of birth as April 6, 1946, including a Form N-405, Petition for Naturalization; a Form N-426, Certification of Military or Naval Service; and Forms G-325 and G-325B, Biographic Information. Accordingly, the Director correctly found

that there are no provisions under 8 C.F.R. § 338.5 to justify or to allow for a USCIS correction of the applicant's date of birth on his Certificate of Naturalization.

Because there are no clerical errors in the present matter, USCIS has no statutory authority to correct the applicant's date of birth on his 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 USCIS 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 submission of a request to a U.S. Federal Court in accordance with the Act and Regulations.

ORDER: The appeal is dismissed.