



U.S. Department of Justice

Immigration and Naturalization Service

ES

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

FILE: [Redacted]

Office: Philadelphia

Date:

AUG 22 2000

IN RE: Applicant:

[Redacted]

APPLICATION:

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

IN BEHALF OF APPLICANT:

[Redacted]

Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

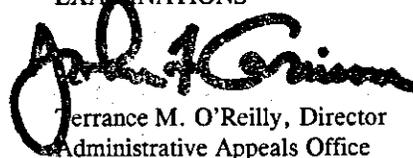
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native of the [REDACTED] who was lawfully admitted for permanent residence on [REDACTED] under the name of [REDACTED]. On [REDACTED] the applicant married [REDACTED]. On [REDACTED] the applicant filed an Application for Naturalization. On [REDACTED] she appeared for interview and signed a statement indicating that she wished to proceed with her preliminary hearing without the presence of her attorney and signed the form [REDACTED]. The applicant submitted a Certificate Preparation and Oath Declaration sheet on which her name, date of birth, height, country of former nationality, and marital status were printed. The printed letter "M" in the words [REDACTED] and [REDACTED] are printed identically. The Form N-400 application also submitted by the applicant had her typewritten name as [REDACTED]. The record also contains a [REDACTED] marriage certificate which reflects that [REDACTED] married the applicant on [REDACTED]. She seeks to obtain a new Certificate of Naturalization to replace the original one issued to her on [REDACTED] to correct her surname.

The district director reviewed the record and determined that any corrections should have been made when the application was reviewed on [REDACTED]. The district director concluded that the Service is precluded from issuing a certificate in another name and denied the application accordingly.

On appeal, counsel states that the applicant was issued a Naturalization Certificate with an incorrect name. Counsel asserts that the problem stems from the fact that there was a typographical error on the marriage certificate which was issued in the [REDACTED] on [REDACTED].

Section 343(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1454, provides, in part, that if the name of any naturalized citizen has, subsequent to naturalization, been changed by order of any court of competent jurisdiction, or by marriage, the citizen may make application for a new certificate of naturalization in the new name of such citizen. If the Attorney General finds the name of the applicant to have been changed as claimed, the Attorney General shall issue to the applicant a new certificate and shall notify the naturalization court of such action.

The statute relating to changing one's name and applying for a Certificate of Naturalization is quite clear and is not discretionary. The applicant had her name changed by marriage prior to naturalization and not after naturalization.

Section 338 of the Act provides the statutory authority relating to the contents of a Certificate of Naturalization.

8 C.F.R. 338.5 contains the specific regulations regarding the execution and issuance of Certificates of Naturalization and provides, in part:

(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.

The information on the applicant's Certificate of Naturalization in the record conforms to the facts on her application for that document which was reviewed by the applicant under oath and the certificate does not contain any clerical errors. There are no provisions under §§ 338 or 343 of the Act to justify any corrections on the applicant's Certificate of Naturalization as requested using the present Form N-565 application.

8 C.F.R. 334.16(a) and (b) discuss the general procedures for amending a petition for naturalization during pendency of a petition or application and after final action on a petition or application. Whenever 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 on 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 the court in which application is made. When the court orders the petition amended, the clerk of the court shall transmit a copy of the order to the district director for inclusion in the Service file. See INTERP 334.1(1).

A specific application form for this procedure is not stipulated in 8 C.F.R. 334.16(b). Upon receipt of such a court order, the Service should issue an amended certificate. O.I. 334.11 provides that a copy of any order granting the application shall be placed in the naturalized person's file with the duplicate certificate and the duplicate petition.

Although the applicant has provided documentation to support a request to have her name corrected on her Certificate of Naturalization, only the court has the authority to make this change. Therefore, the district director's decision will be affirmed, and the appeal will be dismissed.



This decision is without prejudice to the applicant's submitting her request to a U.S. Federal District Court with jurisdiction in this matter in accordance with regulations at 8 C.F.R. 334.16.

ORDER: The appeal is dismissed.