U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

FILE: [redacted] Office: New York Date: AUG 13 2001

IN RE: Applicant: [redacted]

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

Public Copy

IN BEHALF OF APPLICANT: Self-represented

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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The applicant is a native of Liberia and naturalized citizen of the United States. He seeks to have his original Certificate of Naturalization, which was issued to him on December 22, 1994, corrected under section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1449, to reflect a change of his date of birth from April 5, 1959, to April 5, 1954.

The district director reviewed the applicant's record and determined that applicant's request was not justifiable and denied the application accordingly.

On appeal, the applicant states that he had his date of birth corrected as requested and was issued an Alien Registration Card with his correct date of birth, April 5, 1954. He states that the card is a true testimonial to this matter.

Section 343 of the Act, 8 U.S.C. 1454, provides the statutory authority regarding the replacement of a Certificate of Naturalization only if the original was lost, mutilated, or destroyed, or if the applicant's name is changed after naturalization by order of the court or by marriage. The regulations at 8 C.F.R. 343a.1, regarding the procedure and grounds for obtaining a replacement Certificate of Naturalization, are quite clear and are not discretionary.

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.

Documents contained in the applicant's record as early as 1981 on his passport, on a copy of his original birth certificate issued in 1982, on his marriage certificate in 1984, on his application for

Status as Temporary Resident in 1987 reflect that he indicated that his true date of birth was April 5, 1959. The applicant indicated initially on his Application for Naturalization that he was born on April 5, 1954, but that date was changed to April 5, 1959, during his interview because the documentation in support of his date of birth at that time, his Alien Registration Receipt Card, his passport, his divorce decree and other documents all indicated that his date of birth was April 5, 1959. That date was then entered on his Application for Naturalization at the time of his interview on October 4, 1994, and he became a naturalized citizen on December 22, 1994.

The record fails to contain a copy of a Form I-90 which would be used to correct an error on his Alien Registration Card. However, since his Alien Registration Card was used to verify his date of birth during his October 1994 interview, it must be presumed that the correction occurred after that date. Further the applicant submitted a corrected copy of his birth certificate issued on January 3, 1995, and after the date of his naturalization in December 1994.

The information on the applicant's Certificate of Naturalization in the record conforms to the facts on his application for that document as of December 1994 and the certificate does not contain any clerical errors. There are no provisions under sections 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.

Although the applicant has provided documentation to support a request to have his date of birth amended on his 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 his 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.