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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

JUN 05 2003

[redacted]

FILE: [redacted] Office: Portland (POO) Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Replacement Naturalization/Citizenship Document under Section 338 (343) of the Immigration and Nationality Act, 8 U.S.C. 1449 (1454)

ON BEHALF OF APPLICANT:

[redacted]

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 that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Portland, Oregon, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native of Cambodia and naturalized citizen of the United States. She seeks to have her original Certificate of Naturalization, which was issued to her on September 23, 1982, corrected under section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, to reflect a change in her date of birth from January 1, 1950, to February 5, 1943.

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

On appeal, counsel submits additional evidence including a birth certificate issued by the government of Cambodia with a certificate of translation verifying her date of birth as February 5, 1943.

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.

Pursuant to 8 C.F.R. § 338.5, the specific regulations regarding the execution and issuance of Certificates of Naturalization are, in part, as follows:

> (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.
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> (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 October 10, 1975, reflect that she indicated her true date of birth as January 1, 1950. She continued to indicate under oath that her correct date of birth was January 1, 1950, on her Application to

File Petition for Naturalization in August 1982 and on her Petition for Naturalization in August 1982.

The information on the applicant's Certificate of Naturalization in the record conforms to the facts on her application for that document 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.

Pursuant to 8 C.F.R. § 334.16(a) and (b), 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 are as follows. 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(l).

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