

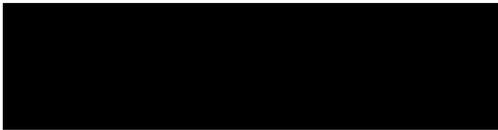
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U.S. Department of Homeland Security

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



MAY 07 2003

FIL [REDACTED]

Office: Portland (POO)

Date:

IN RE: Applicant:



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:

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 which 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 Eritrea and naturalized citizen of the United States. He seeks to have his original Certificate of Naturalization, which was issued to him on November 29, 2000, 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 February 21, 1933, to February 21, 1928.

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, the applicant submits a Baptismal Certificate in support of his claim. He states that his brother, who lives in Eritrea, recently provided him with that evidence.

Section 338 of the Act, 8 U.S.C. § 1449, provides the statutory authority relating to the contents of a Certificate of Naturalization.

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.

Documents contained in the applicant's record as early as August 20, 1980, on his Form I-590 (Registration for Classification as Refugee) reflect that he indicated that his true date of birth was February 21, 1933. He continued to indicate, under oath, that his correct date of birth was February 21, 1933, on his Form I-181 (Memorandum of Creation of Record of Lawful Permanent Residence) approved on April 23, 1982, and on his Application for Naturalization approved on November 26, 2000.

The information on the applicant's Certificate of Naturalization in the record conforms to the facts on his application for that document and the certificate does not contain any clerical errors.

There are no provisions under sections 338 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. court in accordance with the regulations at 8 C.F.R. § 334.16.

ORDER: The appeal is dismissed.