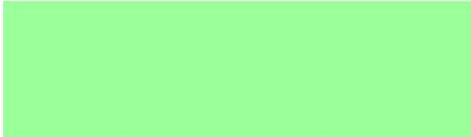


(b)(6)

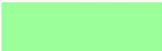
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

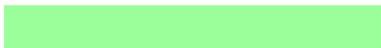


U.S. Citizenship
and Immigration
Services



DATE: DEC 19 2014 OFFICE: NEBRASKA SERVICE CENTER

FILE: 

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Nebraska Service Center (the director) denied the Application for Replacement Citizenship/Naturalization Document (Form N-565) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the matter returned to the director for issuance of a replacement certificate to the applicant.

Pertinent Facts and Procedural History

The applicant is a native of Iran and a naturalized citizen of the United States. He seeks to have his certificate of naturalization corrected under section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, to reflect a change in his date of birth from July [REDACTED] to July [REDACTED].

The director reviewed the applicant's record and determined that a correction to his certificate of naturalization was not justified. Specifically, the director noted that July [REDACTED] was the corrected date of birth provided by the applicant in his naturalization application. The Form N-565 was denied accordingly.

On appeal, the applicant asserts that he stated that his date of birth was July [REDACTED] in his naturalization application and at the time of his naturalization interview; however, the date was changed to July [REDACTED] by the interviewing officer due to a discrepancy in the English translation of his Iranian birth certificate. He indicates that his Canadian passport and all other U.S. immigration related information contained in the record reflect that he was born on July [REDACTED] and he submits a new English translation of his birth certificate reflecting that he was born on July [REDACTED]. He also provides Gregorian and Persian calendar and leap year information to explain how the erroneous translation of his birth date may have occurred.

We conduct appellate review on a *de novo* basis.

Applicable Law

Section 338 of the Act provides the statutory authority relating to the contents of a certificate of naturalization. In addition, the regulations regarding the execution and issuance of certificates of naturalization are contained in 8 C.F.R. § 338.5, and provide, in part:

- (a) *Application.* 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 may be filed, without fee, in accordance with the form instructions.

* * *

- (e) *Data change.* 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 name or date of birth at the time of the naturalization.

Analysis

The applicant has established that his certificate of naturalization does not conform to the facts shown on his Application for Naturalization (Form N-400). The record reflects that the applicant's Form N-400 receipt notice contains the applicant's July [REDACTED] date of birth, and the applicant stated on the Form N-400 that he filed in May 2013, that his date of birth was July [REDACTED]. The applicant's date of birth was subsequently changed to July [REDACTED] by the U.S. Citizenship and Immigration Services (USCIS) interviewing officer during the applicant's naturalization interview so that the date would match an English translation of the applicant's Iranian birth certificate. Although the applicant signed and acknowledged the birth date change on his Form N-400, he states on appeal that he told the officer his date of birth was July [REDACTED].¹

Upon review, it appears that there was a clerical error in the preparation of the applicant's certificate and a correction of the naturalization certificate is justified pursuant to the regulation at 8 C.F.R. § 338.5. Accordingly, this matter will be returned to the director for the issuance of a certificate of naturalization with July [REDACTED] as the applicant's date of birth.

Conclusion

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained. The matter is returned to the Nebraska Service Center for issuance of a replacement certificate of naturalization.

¹ The applicant also indicates that the interviewing officer told him that he would ask for the birth date correction to be made on the applicant's naturalization certificate because the applicant's U.S. lawful permanent resident card and related documents, as well as his U.S. nonimmigrant visa information and his Canadian passport reflected that he was born on July [REDACTED]. The applicant asserts that the interviewing officer also told him that if the correction to his date of birth was not made prior to the naturalization ceremony, the applicant could correct the date after the ceremony, which the applicant tried unsuccessfully to do.