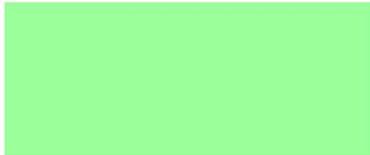


(b)(6)

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

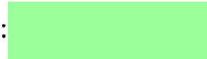


U.S. Citizenship
and Immigration
Services

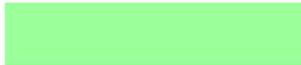


Date: FEB 07 2014 Office: NEBRASKA SERVICE CENTER

FILE:



IN RE:



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,

A handwritten signature in black ink, appearing to read "Jon Rosenberg".

Jon Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (the director), denied the Application for Replacement Naturalization/Citizenship 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 will be returned to the director for issuance of a replacement certificate of naturalization.

Pertinent Facts and Procedural History

The applicant is a native of Mexico, 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 June 4, 1947 to July 4, 1947.

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, although the applicant had listed July 4, 1947 as his date of birth in his naturalization application, he corrected the date during the naturalization interview to correspond to the date listed in his immigration file, June 4, 1947. The application was denied accordingly. On appeal, the applicant requests that his certificate of naturalization be changed to list July 4, 1947 as his date of birth. In support of his appeal, the applicant resubmits a copy of his birth certificate, listing July 4, 1947 as his date of birth.

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, that:

- (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.

* * *

Analysis

The applicant has established that his certificate of naturalization does not conform to the facts shown on his application for naturalization. Specifically, the applicant originally stated on his Application for Naturalization (Form N-400) that his date of birth is July 4, 1947. It appears that a redlined change was made from July to June at the time of the applicant's naturalization interview; however, it appears that the change was made to conform the date to the erroneous date on the applicant's permanent resident card. The July 4, 1947 date is listed in the applicant's immigrant visa questionnaire and the birth certificate submitted with the applicant's immigrant visa application; a recently-issued birth certificate; and a Form G-325, Biographical Form, submitted in connection with the applicant's naturalization application. The June 4, 1947 date appears only on the applicant's permanent resident card and immigrant visa and alien registration document (Form FS-511). The



evidence in the record suggests that the use of the June 4, 1947 date of birth was the result of a clerical error in the preparation of the applicant's immigrant visa registration.

Because the applicant originally stated his birth date as July 4, 1947 on his naturalization application, a correction of his 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 listing July 4, 1947 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 director for issuance of a replacement certificate of naturalization, listing July 4, 1947 as the applicant's date of birth.