



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: Office: NEBRASKA SERVICE CENTER [REDACTED]

JAN 31 2014

IN RE: [REDACTED]

APPLICATION: Application for Replacement Naturalization 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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Nebraska Service Center (the director) denied the Application for Replacement Naturalization/Citizenship Document (Form N-565), and the matter now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the applicant's request for a replacement certificate of naturalization will remain denied.

Pertinent Facts and Procedural History

The applicant is a native of Vietnam, 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 April 14, 1962 to April 14, 1960.

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 the applicant had provided the 1962 date of birth on the certificate at the time of naturalization. The application was denied accordingly. On appeal, the applicant requests that U.S. Citizenship and Immigration Services (USCIS) change the date of birth on his certificate of naturalization because in 2011, he obtained a copy of his birth certificate, which showed his date of birth to be April 14, 1960, and he subsequently obtained a court order reflecting his date of birth as April 14, 1960.

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.

* * *

- (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

Based on the evidence in the record, the applicant has not established that his certificate of naturalization, which states that his date of birth is April 14, 1962, contains clerical errors attributable to USCIS. Here, the birth date on the applicant's certificate of naturalization conforms

to the birth date stated in his Application to File Petition for Naturalization (Form N-400). Additionally, the record contains other documents with the April 14, 1962 date of birth, including: the applicant's Petition for Naturalization (Form N-405); the applicant's Application by Indochinese Refugee for Permanent Residence (Form I-485C); a Memorandum of Creation of Record of Lawful Permanent Residence (Form I-181); a police clearance letter; a Biographic Information Sheet (Form G-325A); and a fingerprint card.

The AAO acknowledges that the record includes several documents showing the applicant's date of birth to be April 14, 1960, including: a Verified Petition to Establish Birthdate filed by the applicant in 2011; an Order Establishing Fact of Birth entered by the Superior Court of California; and a birth certificate, a copy of which was obtained in 2011. These documents, however, were obtained several years after the applicant naturalized. Because the applicant acknowledged his birth date as April 14, 1962 on his naturalization application and his immigration record reflects the April 14, 1962 date of birth, the AAO concludes that there was no clerical error attributable to USCIS in the preparation of the applicant's certificate of naturalization. *See* 8 C.F.R. § 338.5. Consequently, USCIS will not issue to the applicant a replacement naturalization certificate.

Conclusion

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 not been met.

ORDER: The appeal is dismissed. The applicant's request for a replacement certificate of naturalization remains denied.