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



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: OCT 22 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for a Replacement Citizenship Document (Form N-565)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank You,

A handwritten signature in black ink, appearing to read "Perry Rhew".
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of Mexico who acquired U.S. citizenship through his father. The applicant seeks to amend his certificate of citizenship, which incorrectly states his date of birth as December 12, 1986.

The Service Center Director determined that the date of birth on the applicant's certificate of citizenship conforms to the date of birth indicated on his Form N-600, Application for Certificate of Citizenship and denied the application accordingly.

On appeal, the applicant maintains that he was born on December 22, 1986, and not December 12, 1986. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record reveals that a clerical error was made in the issuance of the applicant's certificate and the appeal will be sustained.

Section 343 of the Act, 8 U.S.C. § 1454, and the corresponding regulations at 8 C.F.R. § 343a provide no authority to change the date of birth on a certificate of citizenship. The statute and regulations allow for issuance of a replacement certificate if the original document has been lost, mutilated or destroyed; or if a citizen's name has changed after naturalization due to marriage or a court order. *See* Section 343(a), (c) of the Act; 8 C.F.R. § 343a.1. The statute and regulations governing certificates of citizenship do not address the possibility of errors made in the preparation of the certificate and the need for correction of such mistakes. Section 338 of the Act, 8 U.S.C. § 1449, and the regulations promulgated thereunder, at 8 C.F.R. § 338.5, permit the correction of a certificate of naturalization in certain limited circumstances. Where warranted, these regulations may be extended to certificates of citizenship.

The regulation at 8 C.F.R. § 338.5 provides, in pertinent part:

- (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 name or date of birth at the time of the naturalization.

In this case, the record indicates that a clerical error was made in the preparation of the applicant's certificate of citizenship because the date of birth stated on his certificate of citizenship does not conform to the date of birth consistently stated in his immigration file, including his records of admission and lawful permanent residency. The immigrant petition for alien relative filed on the applicant's behalf, his application to adjust status and the accompanying birth certificate all state the applicant's date of birth as December 22, 1986. The December 22, 1986 date of birth is also listed on the applicant's permanent resident card and his Colorado Driver's License.

On appeal, the applicant has established that the date of birth on his certificate of citizenship is erroneous. The record contains no identity document listing December 12, 1986 as the applicant's date of birth and the statement of this date on the applicant's certificate of citizenship was the result of clerical error. Accordingly, the appeal will be sustained and the matter will be returned to the service center for issuance of a replacement certificate stating the applicant's correct date of birth as December 22, 1986.

ORDER: The appeal is sustained. The matter is returned to the Nebraska Service Center for issuance of a replacement certificate of citizenship stating the applicant's correct date of birth.