(b)(6)

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

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

Date: APR 09 2013 OFFICE: NEW YORK, NY FILE:

IN RE: APPLICANT:

APPLICATION: Application for Replacement Naturalization/Citizenship Document under Sections 338 and 343 of the Immigration and Nationality Act, 8 U.S.C. §§ 1449 and 1454.

ON BEHALF OF APPLICANT:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

**DISCUSSION**: The New York, New York District Director (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 returned to the director for issuance of a new certificate of naturalization.

The applicant is a native of the Philippines who entered the United States in 1984 as a lawful permanent resident and became a naturalized U.S. citizen in 1993.[1] At the time of her birth and naturalization, the applicant's gender was identified as male, but she subsequently changed her gender to female and changed her name. The applicant seeks a new certificate of naturalization pursuant to sections 338 and 343 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1449 and 1454, reflecting her changed name and gender.

In denying the application, the director determined that a Form N-565 may not be submitted to change a U.S. citizen's gender on a naturalization certificate, but failed to address whether the applicant was eligible for a new certificate based upon a change in name. On appeal, counsel asserts, in part, that although the applicant was male when she became a U.S. citizen, the applicant subsequently underwent sex reassignment surgery and is now female. Counsel also states that an April 16, 2004 U.S. Citizenship and Immigration Services (USCIS) policy memorandum supports the issuance of a replacement certificate of naturalization in the applicant's case, and further maintains that denial of the instant application constitutes a violation of the applicant's constitutional rights. The record contains evidence of the applicant's gender reassignment surgery and a court order changing the applicant's name.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has established eligibility for a new certificate of naturalization based upon a court-ordered name change as well as a change in gender.

Section 343(c) of the Act states:

> If the name of any naturalized citizen has, subsequent to naturalization, been changed by order of any court of competent jurisdiction, or by marriage, the citizen may make application for a new certificate of naturalization in the new name of such citizen. If the [Secretary of Homeland Security (Secretary)] finds the name of the applicant to have been changed as claimed, the [Secretary] shall issue to the applicant a new certificate and shall notify the naturalization court of such action.

The implementing regulation at 8 C.F.R. § 343a.1(b) states, in pertinent part: "A naturalized citizen whose name has been changed after naturalization by order of court or by marriage shall apply on Form N-565 for a new certificate of naturalization, or of citizenship, in the changed name."

When filing the Form N-565, the applicant submitted an order from the Civil Court of the City of New York, New York, reflecting that the applicant's name was legally changed on December 31, 2001. As the applicant's name was changed after naturalization pursuant to a court order, the

[1] The record indicates that the applicant has never been married.

applicant is entitled to a new certificate of naturalization reflecting the changed name pursuant to section 343(c) of the Act.

The applicant is also entitled to a new certificate of naturalization based upon a change in the applicant's gender. USCIS policy provides for the issuance of a replacement certificate of naturalization to applicants who have changed their gender and who provide medical certification of the change from a licensed physician. *See* USCIS Policy Manual, Vol. 12, Part K, Cpt. 4, *Replacement of Certificate of Citizenship or Naturalization* (Jan. 7, 2013); USCIS Adjudicators Field Manual, Cpt. 10.22, *Document Issuance Involving Status and Identity for Transgender Individuals* (Amend. Aug. 10, 2012). In this case, the applicant submitted a letter from her surgeon, a licensed physician, attesting to all the relevant facts. The applicant also submitted copies of her U.S. passport, Nevada driver's license and Social Security card, all of which were issued in her new name. The applicant's passport and driver's license also identify her sex as female. Because the applicant has provided sufficient evidence of her changed gender, she is eligible for a replacement certificate of naturalization reflecting her new gender.

As the applicant's appeal will be sustained, we do not reach the issue of whether the applicant's constitutional rights to equal protection and due process were violated upon the initial denial of the application.

**ORDER:** The appeal is sustained. The matter is returned to the director for issuance of a new certificate of naturalization to the applicant that reflects her name as changed by the December 2001 order of the Civil Court of the City of New York, New York, as well as her new gender.