

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **APR 09 2013**

OFFICE: NEW YORK, NY

FILE: [REDACTED]

IN RE:

APPLICANT: [REDACTED]

APPLICATION:

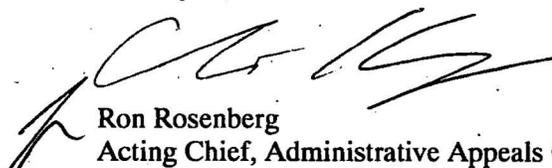
Application for Replacement Naturalization/Citizenship Document under Sections 338 and 343 of the Immigration and Nationality Act, 8 U.S.C. §§ 1449 and 1454.

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 replacement certificate of naturalization.

The applicant is a native of the Philippines who entered the United States in 1986 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. 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 gender.

In denying the application, the director determined that the certificate of naturalization must reflect the U.S. citizen's gender at birth and therefore the applicant's request to amend the certificate was not justifiable. On appeal, counsel asserts that although the applicant was male when she became a U.S. citizen, the applicant subsequently underwent sex reassignment surgery and is now female. The record includes a copy of the applicant's birth certificate, indicating the applicant's gender as "male" as well as evidence of the applicant's subsequently changed gender. On appeal, counsel claims 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 AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant is 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 the hospital records of her gender reassignment surgery as well as a letter from her surgeon, a licensed physician, attesting to all the relevant facts. Because the applicant has provided sufficient medical certification 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 new gender.

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