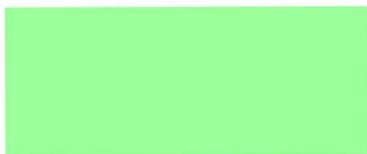


(b)(6)

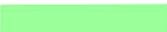
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

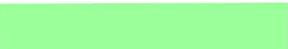


U.S. Citizenship
and Immigration
Services



Date: **AUG 12 2013** Office: TEXAS SERVICE CENTER

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Replacement Naturalization/Citizenship Document, Form N-565

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 "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The applicant has filed a motion to reopen and/or reconsider the AAO's decision. The applicant's motion will be granted. The February 19, 2013 decision of the AAO will be affirmed. The appeal will remain dismissed.

According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by documentary evidence. The regulations, at 8 C.F.R. § 103.5(a)(3), provide further that a "motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy." The applicant's motion meets the requirements for a motion to reopen and will therefore be granted.

The applicant's motion is accompanied by a copy of his marriage certificate, Turkish passport and identification card, his birth certificate, and his New York state income tax return. The applicant states that these documents sufficiently demonstrate that the date of birth listed on his certificate of naturalization should be corrected to reflect the date listed on the documents submitted, November 23, 1957.

As noted in the AAO's February 19, 2013 decision, however, November 21, 1957 is listed as the applicant's date of birth on his naturalization application and naturalization certificate, and was verified under oath by the applicant during the naturalization process. The date of birth on the applicant's certificate of naturalization conforms to the facts as set forth in the applicant's record.

The AAO acknowledges that the applicant submitted documents showing the applicant's date of birth to be November 23, 1957. However, because the applicant acknowledged his birth date as November 21, 1957, on his naturalization application and there was no clerical error in the preparation of the applicant's certificate, USCIS has no authority to change the applicant's Certificate of Naturalization. *See* 8 C.F.R. § 338.5.

Only a federal court with jurisdiction over the applicant's naturalization proceedings has the authority to order that an amendment be made to the applicant's certificate of naturalization, after a hearing in which the Government is provided an opportunity to present its position on the matter. 8 C.F.R. § 334.16(b). *See, e.g., Hussain v. USCIS*, 541 F.Supp. 2d 1082, 1084-87 (D.Minn. 2008) (explaining the applicable procedural requirements and standard of proof).

Specifically, 8 C.F.R. § 334.16(b) states in pertinent part:

Whenever an application is made to the court to amend a petition for naturalization after final action thereon has been taken by the court, a copy of the application shall be served upon the district director having administrative jurisdiction over the territory in which the court is located, in the manner and within the time provided by the rules of court in which [the] application is

made. No objection shall be made to the amendment of a petition for naturalization after the petitioner for naturalization has been admitted to citizenship if the motion or application is to correct a clerical error arising from oversight or omission. A representative of the Service may appear at the hearing upon such application and be heard in favor of or in opposition thereto. When the court orders the petition amended, the clerk of court shall transmit a copy of the order to the district director for inclusion in the Service file.

Accordingly, the applicant's motion will be granted, but the appeal will remain dismissed, without prejudice to the filing of an appropriate action before the U.S. district court with jurisdiction over the applicant's naturalization proceedings.

ORDER: The motion is granted. The February 19, 2013 decision of the AAO is affirmed. The appeal is dismissed.