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

U.S. Citizenship and Immigration Services

Date: DEC 2 0 2013 Office: NEBRASKA SERVICE CENTER FILE:

IN RE:

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

ON BEHALF OF APPLICANT:

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 Application for Replacement Naturalization/Citizenship Document (Form N-565) was denied by the Director, Nebraska Service Center (the director), and came before the Administrative Appeals Office (AAO) on appeal. The appeal was summarily dismissed. On October 10, 2013, the AAO's summary dismissal was set aside and the matter was reopened for entry of a new decision. The appeal will now be dismissed.

The applicant is a native of Yemen who filed an Application for Certificate of Citizenship (Form N-600), claiming that she derived U.S. citizenship through the naturalization of her father. U.S. Citizenship and Immigration Services (USCIS) approved the Form N-600 and issued to the applicant in 2007 a certificate of citizenship with a date of birth of May 2, 2001. The applicant subsequently filed a Form N-565 in 2012, claiming that the date of birth listed on the original certificate is incorrect.

The director determined that the applicant failed to establish that a clerical error was made in preparing the certificate of citizenship, and that the date of birth listed on the certificate conforms to the date of birth previously provided. The director denied the application accordingly and the applicant appealed that decision through the filing of a Notice of Appeal or Motion (Form I-290B).

Counsel for the applicant stated on the Form I-290B that the applicant submitted sufficient DNA and polygraph evidence "to document [that] the applicant was older than represented upon admission." Although counsel claimed that he would submit a physician's report within thirty days of filing the appeal, neither counsel nor the applicant submitted any additional evidence, including a brief. Consequently, the AAO summarily dismissed the appeal. On its own motion, the AAO reopened the proceedings to permit the applicant to submit additional evidence. 8 C.F.R. § 103.5(a)(5)(ii). In response, the applicant submits: a report dated August 10, 2012, from , MD, who concludes that the applicant was likely between 14 and 16 years of age on the date of the examination; a new Yemeni birth certificate, recorded on October 21, 2013, listing July 3, 1997 as the applicant's date of birth; a "Legal Statement" from two individuals in Yemen attesting to the applicant's July 3, 1997 date of birth; and information from the U.S. Department of State (DOB) about the availability of vital statistical documents from Yemen.

Section 343 of the Act, 8 U.S.C. § 1454, and the corresponding regulations at 8 C.F.R. § 343a, allow for issuance of a replacement certificate if the original document has been lost, mutilated or destroyed. *See* Section 343(a), (c) of the Act; 8 C.F.R. § 343a.1. Section 341 of the Act, 8 U.S.C. §1452, which governs the issuance of certificates of citizenship, does not specifically address the circumstances when a correction of a certificate may be warranted. According to the USCIS Policy Manual at Volume 12, Part K, Chapter 4, an applicant may request a replacement certificate when USCIS issued a certificate that does not conform to the supportable facts shown on the applicant's Form N-600, or USCIS committed a clerical error in preparing the certificate.

Here, the applicant's certificate of citizenship indicates that she was born on May 2, 2001. This date conforms to the information provided by the applicant in her Form N-600, as well as evidence in her immigration record at the time USCIS adjudicated the application. Such evidence consists of, but is not limited to: the Petition for Alien Relative (Form I-130) filed by her father on her behalf; and a

birth certificate issued by Yemeni authorities and submitted with her Form N-600 that lists May 2, 2001 as the applicant's date of birth.

On the Form I-290B, counsel claims that the applicant's age is established by DNA testing and polygraph results; however, this evidence only demonstrates that the applicant may have a biological relationship to her father, and that she was truthful when asserting she entered the United States prior to the age of 18. None of the evidence establishes that the applicant was born on July 3, 1997 as she now claims. In addition, a review of the applicant's father's immigration record indicates that he listed the applicant as his child on his naturalization application in 2004, indicating that she was born on May 2, 2001, and that her siblings were both born on July 3, 1997.

Dr. report concludes that the applicant was likely between 14 and 16 years of age as of August 2012. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). It appears that Dr. made his conclusions based upon a visual examination of the applicant's physical appearance. Dr. report contains no reference to his method of determining the applicant's approximate age, such as describing the psychological or physical tests he performed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Accordingly, Dr. report is not sufficient to support a claim that a change of the applicant's date of birth on her certificate of citizenship is warranted.

Throughout these proceedings, neither counsel nor the applicant has explained why the May 2, 2001 date of birth was listed on numerous documents, petitions and applications submitted to USCIS and legacy Immigration and Naturalization Service throughout the years, if such date was erroneous. The applicant submits a new birth certificate from Yemen, indicating her date of birth as July 3, 1997. While there is no explanation from either counsel or the applicant regarding the evidence that was submitted to Yemeni authorities to obtain this new birth certificate, the record contains a "Legal Statement" written by two witnesses in Yemen in 2013, purporting to know the applicant's date of birth. According to the DOS information provided by counsel regarding the availability of birth, marriage divorce and death certificates in Yemen[1]:

> Available. However, Yemen does not yet have an established system of recording vital statistics. Furthermore, most Yemenis do not register births, marriages, divorces and deaths when they occur. To satisfy the need for civil documents for immigration and other purposes, Yemenis generally prepare 'court judgments.' These can be issued at any time by any district court within the country. Information in these documents is normally based on the testimony

[1] This information may be accessed at http://travel.state.gov/visa/fees/fees_3272.html by selecting Yemen as the country.

of an informant or his proxy, and witnesses who may or may not have direct knowledge of the events about which they are testifying. Dates in these documents are always suspect. At best, they are only as good as the memory or written records of the informant. At worst, the information in these documents can be completely false. The court makes no attempt to independently verify the testimony of informants and witnesses. Therefore, court judgments should be given no more weight than affidavits if presented in support of a relationship claim.

Recently, civil registry offices around the country have begun to issue birth and death certificates in standardized formats, normally on orange or green cards approximately 5 x 8 inches in size. Again, however, these certificates are issued at any time after the event on the basis of information provided to the civil registry office by the person requesting the document. Therefore, they cannot be considered any more reliable than court judgments.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The "Legal Statement" does not contain any information regarding how the two witnesses have direct personal knowledge of the applicant's birth and its circumstances. Neither witness states that he or she was present at the birth or otherwise provides the source of the knowledge about the event. Accordingly, the new Yemeni birth certificate, issued in October 2013, does not warrant a change in the applicant's date of birth on her certificate of citizenship.

The submitted evidence fails to establish, by a preponderance of the evidence, that the birth date on the applicant's certificate of citizenship is erroneous such that an amendment of her certificate is warranted. USCIS issued a certificate to the applicant in 2007 that conformed to the supportable facts shown on the applicant's Form N-600, and the applicant has not demonstrated that USCIS committed a clerical error in preparing the certificate. It is the applicant's burden to establish eligibility for the immigration benefit sought, and here the applicant has not met that burden. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is dismissed.