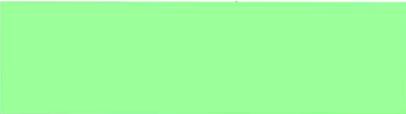


(b)(6)

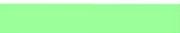


U.S. Citizenship
and Immigration
Services



Date: **MAR 21 2013**

Office: NEBRASKA 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 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you


Ron Rosenberg
Acting 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 dismissed.

The applicant seeks to correct a certificate of naturalization pursuant to sections 338 and 343 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1449 and 1454, claiming that the date of birth listed on the certificate is incorrect.

The director determined that the certificate of naturalization reflects the applicant's true and correct date of birth, as indicated on the Form N-400, Application for Naturalization. The application was denied accordingly. On appeal, the applicant maintains that the date of birth listed on his certificate is incorrect and should be amended.

The applicant's certificate of naturalization indicates that his date of birth is December 24, 1963. The applicant's Form N-400, Application for Naturalization, also lists December 24, 1963 as the applicant's date of birth. The applicant's immigration documents all indicate that December 24, 1963 is his date of birth. The applicant now claims that he was born on December 4, 1963. The applicant submits, in relevant part, an affidavit, written statements by two of his brothers, and a birth certificate indicating that his date of birth is December 4, 1963.

Section 338 of the Act provides the statutory authority relating to the contents of a certificate of naturalization. The specific regulations regarding the execution and issuance of certificates of naturalization are contained in 8 C.F.R. § 338.5, and provide, in pertinent part, that:

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

As noted above, December 24, 1963 is listed as the applicant's date of birth on his naturalization application and naturalization certificate, and verified under oath by the applicant during the naturalization process. The December 24, 1963 date is listed in all of the applicant's immigration

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documents as well. Thus, the December 24, 1963 date of birth shown on the applicant's certificate of naturalization conforms to the facts as set forth in the applicant's record.

Section 338 of the Act does not provide authority to U.S. Citizenship and Immigration Services to change a certificate of naturalization to reflect a date of birth other than that shown on the naturalization application where, as here, there is no evidence of a clerical error. *See* 8 C.F.R. § 338.5. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.