



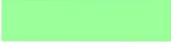
**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **MAY 24 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.

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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 her certificate is incorrect and should be amended.

The applicant's certificate of naturalization indicates that her date of birth is April 17, 1959. The applicant's Form N-400, Application for Naturalization, also lists April 17, 1959 as the applicant's date of birth. The applicant's lawful permanent resident card indicates that April 17, 1959 is her date of birth. The applicant claims that she was born on April 17, 1949. The applicant submits, in relevant part, a birth certificate indicating that her date of birth is April 17, 1949. The applicant's refugee processing documents and contemporaneous Vietnamese records indicate that the applicant was born on April 17, 1949.

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) *Application.* 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, may be filed, without fee, in accordance with the form instructions.

. . . .

- (c) *USCIS-issued certificates.* If the certificate was originally issued by USCIS (or its predecessor agency), and USCIS finds that a correction was justified, the correction shall be made to the certificate and a dated endorsement made on the reverse of the certificate.
- (d) *Administrative actions.* When a correction made pursuant to paragraphs (b) or (c) of this section would or does result in mutilation of a certificate, USICS will issue a replacement Certificate of Naturalization and destroy the surrendered certificate.

- (e) *Data change.* 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 the naturalization.

Although April 17, 1959 is listed as the applicant's date of birth on her naturalization application, her original immigration records indicate that she was born on April 17, 1949. The 1949 was replaced with the 1959 date in the applicant's immigrant visa application, but no reason is provided for the amendment, nor does the 1959 date correspond to the contemporaneous documentation in the applicant's record. Section 338 of the Act provides that a change a certificate of naturalization to reflect a date of birth other than that shown on the naturalization application is justified where, as here, there is evidence of a clerical error. *See* 8 C.F.R. § 338.5. The appeal will therefore be sustained.

ORDER: The appeal is sustained.