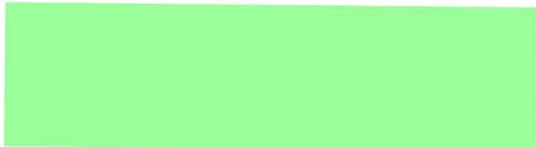


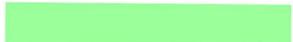


U.S. Citizenship
and Immigration
Services

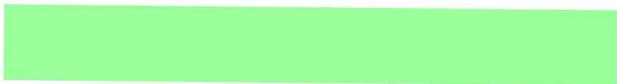
(b)(6)



Date: **APR 16 2014** Office: TEXAS SERVICE CENTER



IN RE: Applicant:



APPLICATION: Application for Replacement Naturalization Document under Section 338 of the Immigration and Nationality Act, 8 U.S.C. § 1449

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. 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 Director of the Texas Service Center (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 dismissed.

Pertinent Facts and Procedural History

The applicant is a native of Mexico, and a naturalized citizen of the United States. He seeks to have his certificate of naturalization corrected under section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, to reflect a change in his date of birth from May 12, 1954 to October 12, 1950.

The director reviewed the applicant's record and determined that a correction to his certificate of naturalization was not justified. Specifically, the director noted that the applicant had claimed the date of birth on the certificate at the time of naturalization, and that the date conformed to the applicant's entire immigration record. The application was denied accordingly.

On appeal, the applicant requests that his certificate of naturalization be changed to conform to his correct date of birth, October 12, 1950. The applicant states that his birth registration was originally delayed and that the error has been recently corrected by the Mexican courts. See Statement of the Applicant in Support of Appeal. The applicant submits a birth and a baptism certificate listing October 12, 1950 as his date of birth.

Applicable Law

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

* * *

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

Analysis

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant's administrative record contains, in relevant part, the following documents pertaining to the applicant's date of birth:

- The applicant's Form N-400, Application for Naturalization, originally listing the date of birth as May 12, 1964 and corrected to 1954;
- The applicant's Texas' driver's license, listing May 12, 1954 as the applicant's date of birth;
- A Form I-468, Naturalization Processing Sheet, listing May 12, 1954 as the applicant's date of birth; and
- The applicant's Permanent Resident Card, listing May 12, 1954 as the applicant's date of birth.

Based on the evidence in the record, the applicant has not established that his certificate of naturalization, which states that his date of birth is May 12, 1954, contains clerical errors attributable to U.S. Citizenship and Immigration Services (USCIS). As noted above, the applicant originally stated that his date of birth was May 12, 1964 in his Application for Naturalization (Form N-400). The redline changes in his naturalization application indicate that the date of birth was corrected to May 12, 1954 during the naturalization interview. The applicant affirmed the correction when he signed his Form N-400 at the conclusion of his interview. When signing the Form N-400 at the conclusion of the interview, the applicant attested to knowing the contents of his application.

The applicant now claims that the date of birth listed in his naturalization application was a mistake. *See Applicant's Statement in Support of Appeal*. The applicant has obtained a new birth certificate issued in 2013, listing October 12, 1950 as his date of birth.

As provided at 8 C.F.R. § 338.5(e): “[A] correction will not be deemed to be justified where the naturalized person later alleges that the . . . date of birth which the applicant stated to be his or her . . . date of birth at the time of naturalization was not in fact his or her . . . date of birth at the time of the naturalization.” The totality of the relevant evidence in the applicant's administrative record does not support a finding that USCIS made a clerical error when placing the May 12, 1954 date of birth on the applicant's certificate of naturalization. The applicant did not seek to change his date of birth until after he was naturalized. At the time of his naturalization, the applicant's record contained several documents supporting the May 12, 1954 date of birth, and the applicant's asserted to this fact during the naturalization process. Neither the statute nor the regulations allows USCIS to correct a date of birth for any reason but clerical error attributable to USCIS. *See* 8 C.F.R. § 338.5(e).

(b)(6)

NON-PRECEDENT DECISION

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Conclusion

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The application remains denied.