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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: FEB 07 2014 Office: NEBRASKA SERVICE CENTER

FILE

IN RE:

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), denied the Application for Replacement Naturalization/Citizenship Document (Form N-565), and the matter now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the matter will be returned to the director for issuance of a replacement certificate of naturalization.

Pertinent Facts and Procedural History

The applicant is a native of Mexico, and a naturalized citizen of the United States. She seeks to have her 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 her date of birth from April 7, 1972 to July 7, 1972.

The director reviewed the applicant's record and determined that a correction to her 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. The application was denied accordingly. On appeal, the applicant requests that her certificate of naturalization be changed to conform to her correct date of birth, which is July 7, 1972.

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.

* * *

Analysis

Based on the evidence in the record, the applicant has established that her certificate of naturalization, which states that her date of birth is April 7, 1972, contains clerical errors attributable to U.S. Citizenship and Immigration Services (USCIS). Here, the birth date on the applicant's certificate of naturalization does not conform to the birth date originally stated in her Application for Naturalization (Form N-400). It appears that a redlined change was made from July 7, 1972 to April 7, 1972 during the applicant's naturalization interview; however, the applicant did not affirm that this correction was made at her request. Further, the record contains a birth certificate showing the applicant's date of birth to be July 7, 1972. The applicant's driver's license and marriage certificate, and her childrens' birth certificates, also list July 7, 1972 as the applicant's date of birth.

The AAO acknowledges that April 7, 1972 date was listed as the applicant's date of birth on her permanent resident card and naturalization processing sheet. However, the date of birth listed on the

certificate of naturalization does not conform to the date originally indicated in the naturalization application, and the applicant did not affirm the change in the listed birth date. Thus, it appears that there was a clerical error in the preparation of the applicant's certificate and a correction is justified pursuant to the regulation at 8 C.F.R. § 338.5. Accordingly, this matter will be returned to the director for the issuance of a certificate of naturalization listing July 7, 1972 as the applicant's date of birth.

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 been met.

ORDER: The appeal is sustained. The matter is returned to the director for issuance of a replacement certificate of naturalization, listing July 7, 1972 as the applicant's date of birth.