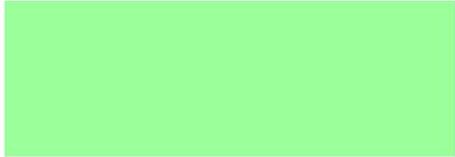


(b)(6)

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

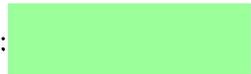


U.S. Citizenship
and Immigration
Services



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.

The applicant is a native of China, 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 [REDACTED]

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 provided the February 29, 1935 date of birth on the certificate at the time of naturalization. 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, [REDACTED]. According to the applicant, the February 29, 1935 date of birth was a translation error, resulting from the differences between the western and lunar calendars, and that [REDACTED] does not exist on the western calendar because it was not a leap year. The applicant submits a letter from the Social Security Administration, informing the applicant that his date of birth under the western calendar is April 2, 1935.

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.

* * *

Based on the evidence in the record, the applicant has established that his certificate of naturalization, which states that his date of birth is [REDACTED] contains a clerical error. The year 1935 was not a leap year. Although [REDACTED] 5 is the birth date stated in the applicant's Petition for Naturalization and immigration documents, such date did not exist in the western calendar. As the applicant explains, and the Social Security Administration corroborates, the twenty-ninth day of the second moon in 1935 in the lunar calendar corresponds to April 2, 1935. There was a clerical error in translating the applicant's Chinese date of birth, and a correction of the applicant's certificate of naturalization is therefore warranted. *See* 8 C.F.R. § 338.5(a).

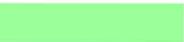
(b)(6)



NON-PRECEDENT DECISION

Page 3

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  as the applicant's date of birth.