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

(b)(6)

U.S. Citizenship and Immigration Services

Date: JAN 10 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:

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 Nebraska Service Center 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 and the application will remain denied.

The applicant is a native of the Philippines, 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 July 12, 1950, to July 12, 1945.

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.

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.
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> (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.

Based on the evidence in the record, the applicant has not established that her Certificate of Naturalization, which states that her date of birth is July 12, 1950, contains clerical errors attributable to U.S. Citizenship and Immigration Services (USCIS). Here, the birth date on the applicant's Certificate of Naturalization conforms to the birth date stated in the two Applications for Naturalization (Form N-400) that the applicant submitted to legacy Immigration and Naturalization Service (INS). Additionally, the record contains other documents with the July 12, 1950 date of birth, including: the applicant's Application for Naturalization (Form N-400); the applicant's Application for Permanent Residence (Form I-485); the applicant's Memorandum of Creation of Record of Lawful Permanent Residence (Form I-181); and the applicant's Biographical Information Sheet (Form G-325A).

The AAO acknowledges that the record includes a birth certificate and a civil registration document showing the applicant's date of birth to be July 12, 1945. However, because the applicant acknowledged her birth date as July 12, 1950, on her naturalization application and there was no clerical error in the preparation of the applicant's certificate, USCIS has no authority to change the applicant's Certificate of Naturalization. *See* 8 C.F.R. § 338.5.

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

ORDER: The appeal is dismissed.