



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **JAN 22 2014** Office: NEBRASKA SERVICE CENTER

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. 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,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Vietnam, 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 May 21, 1962, to May 21, 1952.

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 now claimed 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.

\* \* \*

- (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 May 21, 1962, 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 her Application to File Petition for Naturalization (Form N-400), and affirmed by the applicant during her naturalization proceedings. Additionally, the record contains other documents with the May 21, 1962 date of birth, including: the applicant's lawful permanent resident card; the applicant's Form I-90, Application for an Alien Registration Receipt Card; the Memorandum for Creation of Record of Lawful Permanent Residence, Form I-181; and the applicant's Form I-405, Petition for Naturalization.

The record includes a birth certificate issued in 2013 showing the applicant's date of birth to be May 21, 1952. The May 21, 1952 date of birth is also listed as her correct date of birth in a decree issued by the Superior Court of the State of California in 2012. However, because the applicant

acknowledged her birth date as May 21, 1962 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.