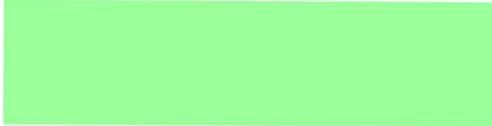


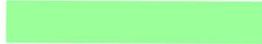


U.S. Citizenship  
and Immigration  
Services

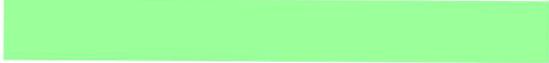
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Date: **JAN 22 2014** Office: NEBRASKA SERVICE CENTER

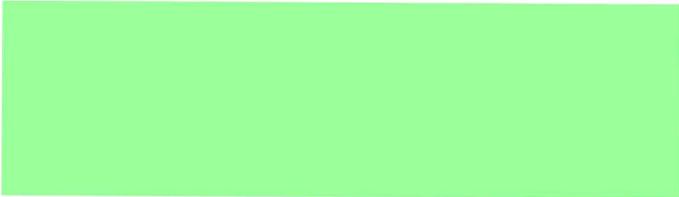


IN RE:



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

ON BEHALF OF APPLICANT:



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, 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.

The applicant is a native of Peru, 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 July 25, 1952, to July 25, 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. 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.

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 his Certificate of Naturalization, which states that his date of birth is July 25, 1952, 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 his Application for Naturalization. Additionally, the record contains other documents with the July 25, 1952 date of birth, including: the applicant's Permanent Resident Card (Form I-551); a Memorandum of Creation of Record of Lawful Permanent Residence (Form I-181); a Request for Asylum in the United States (Form I-589); the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485); a birth certificate issued in 1991; and the applicant's passport.

On appeal, the applicant admits that he believed his date of birth to be July 25, 1952 at the time of his naturalization, but states that six years after he became a naturalized U.S. citizen, he discovered that his date of birth as recorded in his immigration record was incorrect, and he was subsequently issued a new birth certificate that he used to obtain a new Peruvian passport. Because the applicant acknowledged his birth date as July 25, 1952, on his 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.