(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: JUL 0 1 2014 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for Replacement Naturalization/Citizenship 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,

Ron Rosenberg
Chief, Administrative Appeals Office

**DISCUSSION**: The Director, Nebraska Service Center (the director) denied the Application for Replacement Citizenship/Naturalization Document (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.

*Pertinent Facts and Procedural History*

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 November 26, 1969 to November 26, 1970.

The director reviewed the applicant's record and determined that a correction to the certificate of naturalization was not justified. Specifically, the director noted that the applicant had provided the November 26, 1969 date of birth during the naturalization process and failed to establish that a clerical error was made in the preparation of the certificate. On appeal, the applicant requests that his certificate of naturalization be changed to list 1970 as his year of birth.

*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.
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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.

*Analysis*

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In support of his application, the applicant submitted a copy of his Chinese birth certificate and translation issued in 2006 indicating that the applicant was born on "Nov. 26, 1970" and his California Driver License listing his date of birth as "11/26/1970."

The applicant's Form N-400, Application for Naturalization, lawful permanent resident card, Kansas Driver License, criminal records, his Chinese passport, and his Form I-94, Arrival/Departure, all list November 26, 1969 as the applicant's date of birth. The record contains a document dated in 2001 entitled "Crew List" as well as a Form I-409, Report of Deserting Crewman, also listing the applicant's date of birth as November 26, 1969. The applicant's Form I-589, Application for Asylum and Withholding of Removal, lists November 26, 1970 as the applicant's date of birth; however, the year of birth was corrected during the asylum interview and appears in red ink as "1969." While the record contains a copy of the applicant's Chinese marriage certificate and translation, dated in 1997, listing the applicant's date of birth as "Nov., 26, 1970," the preponderance of the evidence establishes the applicant's date of birth as November 26, 1969.

A *de novo* review of the record does not demonstrate that the date of birth indicated on the certificate of naturalization is erroneous and a result of a clerical error made by U.S. Citizenship and Immigration Services (USCIS). The regulation at 8 C.F.R. § 338.5(a) only permits a change to a date of birth based upon clerical error in preparing the certificate attributable to USCIS. The totality of the relevant evidence in the applicant's administrative record does not support a finding that USICS made a clerical error when placing the November 26, 1969 date of birth on the applicant's certificate of naturalization. In addition to the numerous documents supporting the 1969 year of birth, the applicant's asserted to this fact during the naturalization process.

Neither the statute nor the regulations allows USCIS to correct a date of birth for any reason but clerical error attributable to USCIS. *See* 8 C.F.R. § 338.5(a).

*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 not been met.

**ORDER:** The appeal is dismissed and the application remains denied.