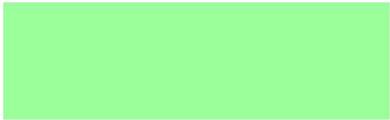




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUL 08 2014**

Office: NEBRASKA SERVICE CENTER

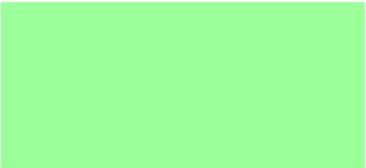
FILE:

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:



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 (director), denied the Application for Replacement Citizenship/Naturalization 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.

Pertinent Facts and Procedural History

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 August 29, 1966 to August 29, 1964.

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 provided the August 29, 1966 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, through counsel, states that a correction of her certificate is justified because she made an "honest mistake." See Letter Accompanying Form I-290B, Notice of Appeal or Motion; see also Appeal Brief. Counsel maintains that the applicant did not swear to or allege that her date of birth was October 29, 1966 during her naturalization process. *Id.*

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.

* * *

- (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).

The applicant naturalized in 1985. Since her admission to the United States as a refugee and throughout her immigration and naturalization proceedings, the applicant's date of birth is listed as August 29, 1966. A birth certificate issued in 2009 by the Republic of Vietnam indicates that the applicant's date of birth is August 29, 1964. The applicant seeks to have her naturalization certificate corrected on that basis.

The applicant's administrative record contains the following documents listing her date of birth as August 29, 1966:

- Biographic Information Forms (G-325A), dated November 12, 1980 and December 27, 1984, respectively;
- Two Forms I-94, Arrival/Departure Records, dated November 11, 1979;
- The applicant's permanent residence card (Form I-551);
- A Memorandum of Creation of Record of Lawful Permanent Resident, Form I-181;
- A Form N-400, Application to File Petition for Naturalization;
- A Form N-405, Petition for Naturalization.

The record now also includes a birth certificate listing the applicant's year of birth as 1964. This certificate, issued in 2009, was first submitted with the Form N-565, Application for Replacement Naturalization/Citizenship Documents.

A *de novo* review of the record demonstrates that the date of birth indicated on the certificate of naturalization conforms to the information provided by the applicant in her Form N-400, Application to File Petition for Naturalization, and is not a result of a clerical error made by U.S. Citizenship and Immigration Services (USCIS). The applicant claimed the August 29, 1966 date of birth throughout her naturalization process as well as the process to become a lawful permanent resident. The applicant admits that she believed that August 29, 1966 was her date of birth. *See Declaration of* [REDACTED] Almost 20 years after her naturalization, the applicant submits a birth certificate showing her date of birth as August 29, 1964.

The regulation at 8 C.F.R. § 338.5(a) only permits a change to a date of birth based upon clerical error attributable to USCIS. As provided at 8 C.F.R. § 338.5(e): “[A] correction will not be deemed to be justified where the naturalized person later alleges that the . . . date of birth which the applicant stated to be his or her . . . date of birth at the time of naturalization was not in fact his or her . . . date of birth at the time of the naturalization.”

The record fails to establish that there was any error in preparing the applicant's certificate of naturalization. As noted above, the 1966 date was provided by the applicant in her naturalization application, and no correction was made during the naturalization proceedings. The applicant's Form N-400, Application to File Petition for Naturalization, contains several redline changes and checkmarks indicating that the applicant attested to, and corrected where necessary, the information initially provided. Item number (3) on the Form N-400 contains a checkmark indicating that the applicant confirmed that her date of birth was August 29, 1966. The Form N-400 also contains an affidavit, signed by the applicant upon completion of her interview, swearing that the contents of the application were true and correct. The applicant also signed the Form N-405, Petition for Naturalization, stating that her date of birth was August 29, 1966.

In support of her request, the applicant, through counsel, cites a few district court cases that are neither persuasive nor binding. Specifically, counsel relies on *Kouancho v. U.S. Citizenship and Immigration Services*, 358 F. Supp.2d 837 (D. Minn 2005). *Kouancho*, a district court case outside this jurisdiction, is not precedential. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court even in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Moreover, while the court in *Kouancho* allowed the correction to the certificate, finding no undue burden or improper motive, it noted that the regulations do not permit USCIS "to administratively amend the birth date on a Certificate of Naturalization in the absence of a clerical error." *Kouancho*, 358 F.Supp.2d at 840. It is well-established that 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.