



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **MAR 18 2014** Office: TEXAS SERVICE CENTER [Redacted]

IN RE: [Redacted]

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

ON BEHALF OF APPLICANT:

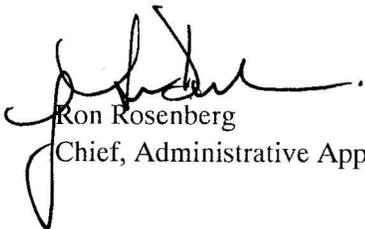
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INSTRUCTIONS:

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 Texas Service Center (the director) 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.

Pertinent Facts and Procedural History

The applicant is a native of the Greece 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 4, 1942 to May 4, 1938.

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.

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's administrative record contains the following documents relevant to her date of birth:

- A Certificate of Eligibility for F Status, submitted in 1961 and listing the applicant's date of birth (DOB) as May 4, 1938;

- Several Applications to Extend Stay (Form I-539), submitted in 1964 and 1965 and listing a DOB of May 4, 1939¹;
- An Application for Permit to Re-enter the United States (Form I-131), submitted in 1969 and listing a DOB of May 4, 1942;
- An Application to File Declaration of Intention (Form N-300) and Declaration of Intention (Form N-315), submitted in 1970 and listing a DOB of May 4, 1942;
- A Petition for Alien Worker (Form I-140), submitted in 1967 on the applicant's behalf, listing her DOB as May 4, 1942;
- An Application for Status as a Permanent Resident (Form I-485) and a Biographical Information Form (G-325A), submitted in 1967 and listing the DOB as May 4, 1942;
- The applicant's birth certificate, submitted along with the Form I-485 and listing the DOB as May 4, 1938;
- An Application for Naturalization (Form N-400) and Statement of Facts for Preparation of Petition, submitted in 1975 and listing the DOB as May 4, 1942; and
- A Petition for Naturalization (Form N-405) submitted in 1975 and listing the DOB as May 4, 1942.

On appeal, counsel states that the error in the applicant's date of birth on her certificate is attributable to U.S. Citizenship and Immigration Services (USCIS) because, at the very least, an adjudicator should have caught the error when processing the applicant's permanent residency application. According to counsel, although the applications submitted by the applicant contained typographical errors, the applicant "did not have the wherewithal to understand or correct[;] she always submitted proper supporting documentation verifying her correct birth year of 1938."

De novo review of the record does not demonstrate that the date of birth provided on the certificate of naturalization is a result of a clerical error made by USCIS. Counsel's claims about the applicant's inability to understand or correct typographical errors on the benefit requests that she signed and submitted to immigration authorities is belied by evidence in the record that the applicant came to the United States in the 1960's to study political science at a U.S. institution of higher education on a graduate level. Furthermore, although counsel states that applicant "always submitted proper supporting documentation to verify her date of birth," only one copy of the applicant's birth certificate was submitted below in conjunction with her application for permanent residency. The applicant submitted no other evidence of her birth along with the various other benefit requests throughout the years.

The applicant originally stated on her Application for Naturalization (Form N-400) that her date of birth is May 4, 1942, and review of the Form N-400 reveals that the adjudicator confirmed the May 4, 1942 date of birth at the time of the naturalization interview, at which time the applicant could have brought the error to the adjudicator's attention. When signing the Form N-400 at the conclusion of the interview, the applicant attested to knowing the contents of her application. The applicant further signed the Petition for Naturalization (Form N-405), which also contained the May 4, 1942 date of birth. At the time of her naturalization, the applicant was in her thirties and

¹ The record indicates that the applicant was in the United States as a graduate student, studying political science.

employed by the New York City Public School System as a teacher. Thus, she was sufficiently proficient in the English language to correct any mistakes on either the Form N-400 or Form N-405 regarding her date of birth. The applicant, however, did not request any changes.

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 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 May 4, 1942 date of birth on the applicant’s certificate of naturalization. In addition to the applicant’s submission of several applications and petitions with the May 4, 1942 date of birth that the applicant signed as being true and correct, the applicant’s confirmed the May 4, 1942 date of birth 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. The application remains denied.