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

(b)(6)

[redacted]

Date: MAR 18 2014 Office: NEBRASKA 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:

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 of the Nebraska 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 Afghanistan, 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 December 15, 1918 to December 15, 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, which she claims is December 15, 1938. The applicant states that her naturalization interview was stressful and she can make mistakes when that happens. She claims that she is only 74 years old, not 94 years old.

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). 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 December 15, 1918, contains clerical errors attributable to U.S. Citizenship and Immigration Services (USCIS).

The December 15, 1918 birth date was listed as the applicant's date of birth in the forms submitted by the applicant in conjunction with her immigrant visa and permanent residence applications, as well as throughout the naturalization process. In addition, the applicant's 1918 date of birth was attested to by in a sworn affidavit executed in 1996.

While a bone age test performed on the applicant before her immigration suggested that her date of birth was between 1926 and 1931, it does not support a conclusion that she was born in 1938. The record contains a birth certificate, identity document and population registration document that indicate that December 15, 1938 is the applicant's date of birth. These documents, however, were not submitted at the time of naturalization. Moreover, the applicant's birth certificate indicates that her birth was registered in 1988. The population registration and identity documents also reflect a 1988 registration date. The applicant has not submitted the evidence she provided to Afghanistan authorities in 1988 for that country to indicate a December 15, 1938 date of birth for her. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The applicant originally stated on her Application for Naturalization (Form N-400) that her date of birth is December 15, 1918, and no redlined changes were made by the adjudicator to change the applicant's date of birth at the time of the applicant's naturalization interview. When signing the Form N-400 at the conclusion of the interview, the applicant attested to knowing the contents of her application.

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 December 15, 1918 date of birth on the applicant's certificate of naturalization. In addition to the documents supporting the December 15, 1918 date 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. The application remains denied.