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 20 2014 Office: TEXAS SERVICE CENTER [redacted]

IN RE: [redacted]

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Application for Replacement Citizenship/Naturalization Document (N-565) was denied by the Director, Texas Service Center (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

Pertinent Facts and Procedural History

The applicant is a native of the Dominican Republic 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 September 28, 1960, to February 28, 1960.

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 record contained a birth certificate reflecting the September 28, 1960 date of birth. The application was denied accordingly. On appeal, the applicant requests that her certificate of naturalization be changed to list February 28, 1960 as her 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.
>
> * * *

Analysis

The applicant has established that her certificate of naturalization does not conform to the facts shown on her application for naturalization. Specifically, the applicant stated on the Application for Naturalization (Form N-400) that she filed in 2012 that her date of birth is February 28, 1960. A red check mark appears next to the February 28, 1960 date, indicating that the interviewer verified the applicant's date of birth. The naturalization certificate does not conform to the facts indicated in the application for naturalization.

The AAO acknowledges that the applicant had previously filed a naturalization application in 1996 listing September 28, 1960 as her date of birth. The September date also appears in the applicant's immigrant visa approval, a birth certificate submitted with her immigration application, her Petition

(b)(6)

for Alien Relative (Form I-130), her immigrant visa application (Form OF-230), and a lawful permanent resident card issued in in 1984.

Nevertheless, as noted above the date of birth listed on the certificate of naturalization does not conform to the date indicated in the naturalization application. Additionally, the record contains a birth certificate reflecting that the applicant's date of birth is February 28, 1960. The applicant's lawful permanent resident card, issued in 2008, also indicates February 28, 1960 as the applicant's date of birth. Thus, it appears that there was a clerical error in the preparation of the applicant's certificate and a correction of the naturalization certificate is justified pursuant to the regulation at 8 C.F.R. § 338.5. Accordingly, this matter will be returned to the director for the issuance of a certificate of naturalization listing February 28, 1960 as the applicant's date of birth.

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 been met.

ORDER: The appeal is sustained. The matter is returned to the Texas Service Center for issuance of a replacement certificate of naturalization.