



**U.S. Citizenship
and Immigration
Services**

(b)(6)

Date: **MAR 20 2014** Office: NEBRASKA SERVICE CENTER

IN RE:

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

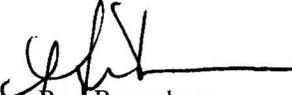
ON BEHALF OF APPLICANT:

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.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Nebraska Service Center (director) denied the Application for Replacement Naturalization/Citizenship Document (Form N-565), and the matter now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

Pertinent Facts and Procedural History

The applicant is a native of Iran 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 June 18, 1947 to June 28, 1951.

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 is June 28, 1951, and that she mistakenly placed her husband's date of birth on her naturalization application.

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). Based on the evidence in the record, the applicant's certificate of citizenship contains clerical errors attributable to U.S. Citizenship and Immigration Services (USCIS). However, while the applicant is eligible to receive a replacement certificate of naturalization, she is not entitled to receive a certificate with a June 28, 1951 date of birth, as the record presently stands.

The applicant's Application to File Petition for Naturalization (Form N-400) contains a redlined change in the date of birth from June 18, 1947 to June 8, 1951 made by the adjudicator in 1990. When signing the Form N-400 at the conclusion of the interview, the applicant attested to knowing the contents of her application and acknowledged the correction to her date of birth. In addition, the Petition for Naturalization (Form N-405) at page 2 also shows the applicant's date of birth to be June 8, 1951. The applicant's Application for Permanent Residence and Refugee Travel Document also contain the June 8, 1951 date of birth.

Although the applicant submits a copy of her U.S. passport and California driver's license, each of which lists June 28, 1951 as her date of birth, she has presented no evidence establishing this as her date of birth and fails to explain what evidence she submitted to the U.S. Department of State along with her passport application that would support a June 28, 1951 birthdate. 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)).

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 shows that USICS made a clerical error when placing the June 18, 1947 date of birth on the applicant's certificate of naturalization; however, based on the record as presently constituted, the applicant is not entitled to a replacement certificate of naturalization with the June 28, 1951 date of birth. Accordingly, the matter is returned to the director to determine whether a replacement certificate of naturalization with a June 8, 1951 date of birth is justified.

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.

ORDER: The director's decision is withdrawn and matter returned for entry of a new decision, which if adverse to the applicant shall be certified to the AAO for review.