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 2 4 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:

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 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 Cambodia, and a naturalized citizen of the United States. He seeks to have his 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 his date of birth from February 12, 1952 to March 15, 1945.

The director reviewed the applicant's record and determined that a correction to his 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, and that the date conformed to the applicant's entire immigration record. The application was denied accordingly.

On appeal, the applicant requests that his certificate of naturalization be changed to conform to his correct date of birth, March 15, 1945. The applicant submits a Buddhist school certificate indicating that his date of birth is March 15, 1945, and states that this document is more reliable than the oral statement during his refugee processing that resulted in the February 12, 1952 date of birth being used in his immigration documents. *See* Statement of the Applicant in Support of Appeal.

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). The applicant's administrative record contains the following documents listing the applicant's date of birth as February 12, 1952:

- The applicant's Form N-405, Petition for Naturalization;
- The applicant's Form N-400, Application to File Petition for Naturalization;
- A Memorandum of Creation of Record of Lawful Permanent Residence (Form I-181);
- The applicant's Permanent Resident Card;
- A Biographic Information Form (G-325A);
- A Form I-590, Registration for Classification as Refugee; and
- A Form OF-157, Medical Examination of Applicants for United States Visas.

Based on the evidence in the record, the applicant has not established that his certificate of naturalization, which states that his date of birth is February 12, 1952, contains clerical errors attributable to U.S. Citizenship and Immigration Services (USCIS). As noted above, the February 12, 1952 birth date was listed as the applicant's date of birth in his Application for Naturalization (Form N-400) and entire immigration record.

The applicant now claims that his date of birth is March 15, 1945, as indicated in a Buddhist school certificate. Nevertheless, the applicant stated on his naturalization application that his date of birth is February 12, 1952. 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 his 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 February 12, 1952 date of birth on the applicant's certificate of naturalization. As stated by the applicant, he did not notice a mistake or seek to change his date of birth until after he was naturalized. At the time of his naturalization, the applicant's record contained several documents supporting the February 12, 1952 date of birth, and the applicant 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.