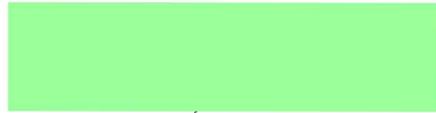




U.S. Citizenship
and Immigration
Services

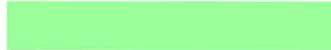
(b)(6)



Date: **MAR 24 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:



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 Somalia, 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 January 1, 1974 to January 1, 1982.

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. 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, January 1, 1982. The applicant states that the 1974 date of birth indicated at the time of his immigration to the United States was the result of a guess, and is incorrect. See Statement of the Applicant dated March 18, 2013. The applicant submits a birth certificate listing January 1, 1982 as his date of birth issued by the [REDACTED] in Somalia.

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 listing the applicant's date of birth as January 1, 1974:

- The applicant's Form N-400, Application for Naturalization;
- A Form I-649, Certificate Preparation and Oath Declaration, signed by the applicant in 1999;
- A Memorandum of Creation of Record of Lawful Permanent Residence (Form I-181);
- The applicant's Permanent Resident Card;
- Biographic Information Forms (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 January 1, 1974, contains clerical errors attributable to U.S. Citizenship and Immigration Services (USCIS). As noted above, the January 1, 1974 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 stated on his naturalization application that his date of birth is January 1, 1974. 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.

The applicant now claims that after he was naturalized he obtained a birth certificate listing January 1, 1982 as his date of birth and seeks to have his certificate of naturalization corrected.¹

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 USCIS made a clerical error when placing the January 1, 1974 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

¹ Counsel asserts that U.S. Citizenship and Immigration Services (USCIS) has sole authority to change a certificate of naturalization given the repeal of the regulation at 8 C.F.R. § 334.16 in 2011. *See* Counsel's Letter in Support of Appeal. That regulation did not relate to USCIS jurisdiction, and its repeal has no effect on these proceedings.

(b)(6)

NON-PRECEDENT DECISION

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naturalization, the applicant's record contained several documents supporting the January 1, 1974 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.