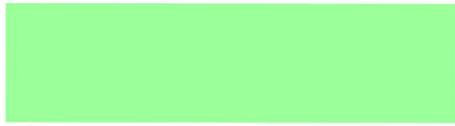
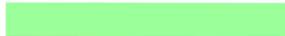


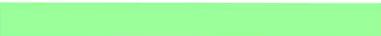


U.S. Citizenship  
and Immigration  
Services

(b)(6)

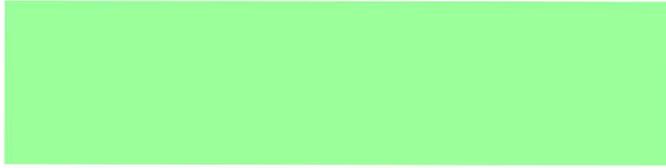


Date: **MAR 24 2014** Office: NEBRASKA SERVICE CENTER 

IN RE: 

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

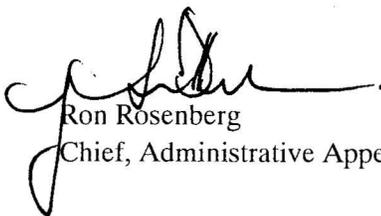
ON BEHALF OF APPLICANT:



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

*Pertinent Facts and Procedural History*

The applicant is a native of Vietnam 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 January 1, 1950 to February 13, 1933.

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 provided the January 1, 1950 date of birth during the naturalization process. The application was denied accordingly. On appeal, the applicant requests that her certificate of naturalization be changed to list February 13, 1933 as her date of birth and submits a copy of permanent resident card (Form I-551), which lists her date of birth as February 13, 1933.

*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 relevant to her date of birth:

- A Medical Examination of Applicants for United States Visas (Optional Form 157), listing her date of birth (DOB) as January 1, 1950;
- An Affidavit of Support (Form I-134), signed by her nephew on January 25, 1991, listing the applicant has being 41 years old;
- Copies of Vietnamese Identity Documents, listing the applicant's DOB as January 1, 1950;<sup>1</sup>
- A declaration, signed by the applicant on March 2, 1994, stating that she was born in 1944;
- A Vietnamese Identity Card, listing her DOB as January 1, 1950;
- An Alien Relative Petition (Form I-130) filed on her behalf, listing her DOB as January 1, 1950;
- A Refugee Application (Form I-590), dated in 1994 and listing her DOB as "Jan 01, '50 (1944)";
- A Memorandum of Creation of Record of Lawful Permanent Residence (Form I-181), listing her DOB as January 1, 1950;
- A Biographic Information Form (G-325A), dated September 1996 and listing her DOB as January 1, 1950;
- The applicant's permanent residence card (Form I-551), listing her DOB as February 13, 1933;
- A translation of an alleged "Certificate of Baptism" issued on June 6, 1997 from the Parish of ██████████, listing the applicant's DOB as February 13, 1933<sup>2</sup>;
- An "Order Establishing Fact of Birth" issued by the Superior Court of the State of California in ██████████ in February 2000, indicating the applicant's DOB as February 13, 1933; and
- The applicant's California Identity Card, indicating her DOB as February 13, 1933.

*A de novo* review of the record does not demonstrate that the date of birth indicated on the certificate of naturalization is erroneous and a result of a clerical error made by U.S. Citizenship and Immigration Services (USCIS). The applicant has claimed three dates of birth throughout her immigration record: February 13, 1933; 1944; and January 1, 1950. Regarding the 1950 date of birth, the applicant submitted several documents to establish this fact, including the Vietnamese identity documents and Identity Card. Neither the applicant nor counsel has alleged any fraud or illegality by the Vietnamese authorities in the preparation of these documents. While the applicant in 1994 claimed that she was born in 1944, she provided no evidence in support of her assertions, including secondary evidence if primary evidence was unavailable. See 8 C.F.R. § 103.2(b)(2)(i),(ii). 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)).

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<sup>1</sup> These identity documents were not submitted with the required English translations. 8 C.F.R. § 103.2(b)(3).

<sup>2</sup> The applicant did not submit the actual or a copy of the baptismal certificate written in the Vietnamese language.

To support a February 13, 1933 date of birth, the applicant submitted an English translation only of a baptismal certificate and February 2000 court order. Without the Vietnamese language baptismal certificate, USCIS cannot verify the translation or use it solely as a basis to determine that the January 1, 1950 date of birth is erroneous. Regarding the court order, the regulation at 8 C.F.R. § 338.5(a) only permits a change to a date of birth based upon clerical error, even when a court order is obtained. On appeal, counsel submits a copy of the applicant's Form I-551 to demonstrate that the applicant's date of birth is February 13, 1933; however, the applicant's record does not contain the evidence used to place this particular date of birth on the applicant's Form I-551, as the Form I-181 used to create her lawful permanent resident card contains the January 1, 1950. Accordingly, USCIS will not change the date of birth on the certificate simply to match an unconfirmed date of birth on a Form I-551.

The applicant originally stated on her Application for Naturalization (Form N-400) that her date of birth is February 13, 1933. It appears that two redlined changes were made by the adjudicator to change the applicant's date of birth from February 13, 1933 to January 1, 1950 at the time of the applicant's naturalization interview. The Form N-400 indicates that the change in the date of birth was marked and 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. The applicant further signed a Certificate Preparation and Oath Sheet (Form N-649) that also contained a January 1, 1950 date of birth.

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, 1950 date of birth on the applicant's certificate of naturalization. In addition to the numerous documents supporting the January 1, 1950 date of birth, the applicant's asserted to this fact during the naturalization process. Neither the statute nor the regulations allow 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 and the application remains denied.