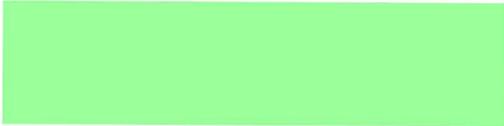


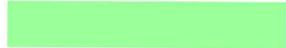


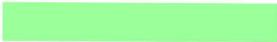
U.S. Citizenship
and Immigration
Services

(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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 The director's decision shall be withdrawn and the matter remanded for entry of a new decision.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. 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, 1957 to January 5, 1958.

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 5, 1958. The applicant submits an Iranian Identification Certificate indicating that his date of birth is January 5, 1958.

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). While the

applicant is eligible to receive a replacement certificate of naturalization, he is not entitled to receive a certificate with a January 5, 1958 date of birth.

The date of birth listed on the applicant's Application for Naturalization (Form N-400) is January 1, 1958. There is a correction made in black ink on the naturalization application to reflect a change from January 5, 1958 to January 1, 1958. The applicant signed the naturalization application, attesting to its contest. The applicant also signed the Form N-649, Certificate Preparation and Oath Declaration, listing January 1, 1957 as his date of birth.

The applicant's administrative record contains the following documents listing the applicant's date of birth as January 1, 1957:

- The applicant's Form N-649, Certificate Preparation and Oath Declaration;
- A Memorandum of Creation of Record of Lawful Permanent Residence (Form I-181);
- The applicant's Permanent Resident Card;
- The applicant's Form I-485, Application for Status as Permanent Resident;
- An Iranian Birth and Baptism Certificate issued in 1978.

The applicant claims that his date of birth is January 5, 1958, as indicated in a Buddhist school certificate. Nevertheless, the applicant attested on his naturalization application that his date of birth is January 1, 1958. Thus, even though the applicant's certificate of naturalization does not conform to the facts shown on the application for naturalization, the date of birth listed on the application is also not the one now claimed by the applicant.

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." Based on the record as presently constituted, the applicant is not entitled to a replacement certificate of naturalization with the January 5, 1958 date of birth. Accordingly, the matter is returned to the director to determine whether a replacement certificate of naturalization with a January 1, 1958 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. Here, that burden has not been met.

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.