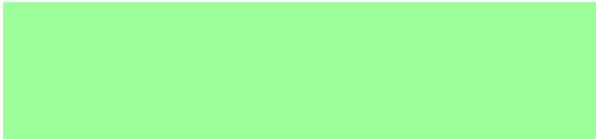


(b)(6)

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

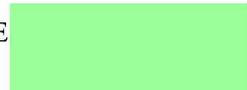


U.S. Citizenship  
and Immigration  
Services



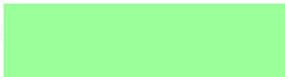
Date: **MAY 29 2014** Office: NEBRASKA SERVICE CENTER

FILE



IN RE:

Applicant:



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:

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,

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

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 Burma 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 April 10, 1949 to October 4, 1949.

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 April 10, 1949 date of birth during the naturalization process and failed to establish that a clerical error was made in the preparation of the certificate.

On appeal, the applicant requests that her certificate of naturalization be changed to list October 4, 1949 as her date of birth. She explains that she mistakenly inverted the month and day in her date of birth, and submits a copy of her birth certificate with a new translation, a copy of her California Driver's License, and a copy of the first page of her passport.

*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 Burmese birth certificate translation listing the applicant's date of birth (DOB) as "10. 4. 1949";
- A Burmese birth certificate translation listing the applicant's DOB as "4-October-1949";
- A Burmese Affidavit of Marriage translation dated May 22, 1972 listing the applicant's DOB as "(10.4.1949)" and her age as 23 years;
- An Alien Relative Petition (Form I-130) filed on the applicant's behalf, listing her DOB as April 10, 1949;
- A Burmese police report listing the applicant's DOB as "10<sup>th</sup>. April, 1949";
- A Immigrant Visa and Alien Registration and Application listing the applicant's DOB as April 10, 1949;
- A Biographic Information Form (G-325A), dated August 21, 1986 and listing the applicant's DOB as April 10, 1949;
- The applicant's permanent residence card (Form I-551), listing her DOB as April 10, 1949;
- The applicant's California Driver's License, indicating her DOB as October 4, 1949;
- The applicant's U.S. passport indicating her DOB as October 4, 1949; and
- The applicant's Notice of Final Naturalization Hearing listing her DOB as April 10, 1949.

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 claimed the April 10, 1949 date of birth throughout her naturalization process as well as the process to become a lawful permanent resident. Only now does the applicant submit a translation of her birth certificate showing her date of birth as October 4, 1949.

The regulation at 8 C.F.R. § 338.5(a) only permits a change to a date of birth based upon clerical error attributable to USCIS. The applicant's record fails to establish that there was any error in preparing the applicant's certificate of citizenship. As noted above, the April 4, 1949 date was provided by the applicant in her naturalization application, and no correction was made during the naturalization proceedings. The April 10, 1949 date appears in the applicant's Form I-551, as well as her immigrant visa registration and application. The AAO further notes that the applicant's affidavit of marriage lists her age as 23 years. The affidavit of marriage lists the applicant's date of birth as "10.4.1949" but was signed in May 1972. In May 1972, the applicant was 23 only if her month of birth was April, not October.

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 April 10, 1949 date of birth on the applicant’s certificate of naturalization. In addition to the numerous documents supporting the April 10, 1949 date of birth, the applicant’s 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 and the application remains denied.