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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: TEXAS SERVICE CENTER

FILE

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:

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, Texas 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 Congo and a naturalized citizen of the United States. He 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 his marital status.

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 indicated that he was married in his naturalization application, and that a correction would require legal proof that his marital status had changed.

On appeal, the applicant requests that his certificate be corrected to reflect that he is single. He submits two certificates issued by Congolese authorities verifying that he is unmarried. He claims: "In Africa, Miss [-] was considered my wife because we have three children together as the custom permits. In the United States, we are not legally married. . . ."

*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 claims that he is not married under U.S. law; however, the validity of a marriage is generally governed by the law of the place where the marriage was celebrated. *Matter of Hosseinian*, 19 I&N Dec. 453, 455 (BIA 1987). On appeal, the applicant claims that he is considered married “in Africa” and the applicant’s entire administrative record reflects that he is married. The applicant listed his wife’s name in his Application for Naturalization (Form N-400) and his Application to Register Permanent Residence or Adjust Status (Form I-485). His wife’s name is also listed in the Form G-325, Biographical Information Sheet submitted with his adjustment of status, as well as on his Registration for Classification as a Refugee (Form I-590). The applicant, his wife and their children were also all processed as a family unit when their applications for refugee status were considered in 2003.

The certificates of celibacy and non-impediment to marriage issued in 2013 by the Mayor of the Municipality of Bandalungwa, Democratic Republic of Congo, do not demonstrate that the applicant was considered unmarried under Congolese law at the time of his naturalization in 2009. More importantly, the applicant has not demonstrated that the Mayor is the proper authority to determine the applicant’s marital status, as the Mayor claimed in the certificate of celibacy that his assertions about the applicant were based upon the applicant’s “identity booklet,” but the applicant left the Congo in January 1999 according to the Form I-590 .

A *de novo* review of the record does not demonstrate that the marital status listed on the applicant’s certificate of naturalization is erroneous or that a correction is warranted.

*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.