

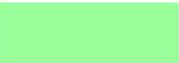


U.S. Citizenship  
and Immigration  
Services

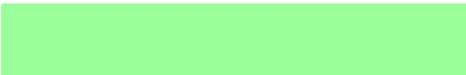
(b)(6)



Date: **MAY 30 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

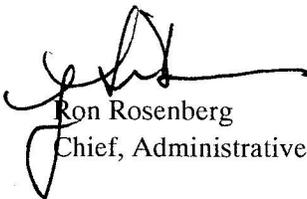
ON BEHALF OF APPLICANT:



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,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center (the director) denied the Application for Replacement Citizenship/Naturalization Document (N-565), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the matter returned to the director for issuance of a replacement certificate to the applicant.

*Pertinent Facts and Procedural History*

The applicant is a native of Liberia 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 March 20, 1957 to March 20, 1953.

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 March 20, 1957 was the date of birth provided by the applicant in her naturalization application.

On appeal, the applicant, through counsel, states that she corrected the date of birth in her naturalization application at the time of her naturalization interview. *See* Statement in Support of Appeal. The applicant maintains that she provided a copy of a birth certificate listing her date of birth as March 20, 1953, and explained the circumstances why a previously submitted birth certificate listed her birth date as March 20, 1957. *Id.*<sup>1</sup>

*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.

\* \* \*

*Analysis*

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<sup>1</sup> Counsel further states that the director erred in not issuing a Notice of Intent to Deny pursuant to 8 C.F.R. § 103.2(b)(8) before denying the application. The regulation permits the issuance of a Notice of Intent to Deny but does not, as counsel suggests, require it. The director did not err in issuing his denial without first issuing a Notice of Intent to Deny.

The applicant has established that her certificate of naturalization does not conform to the facts shown on her application for naturalization. Specifically, although the applicant initially stated on the Application for Naturalization (Form N-400) that her date of birth was March 20, 1957, she corrected the mistake during her naturalization interview and provided a birth certificate indicating that her date of birth is March 20, 1953. A red circle and question mark appears next to the March 20, 1957 date on the Form N-400, as well as a notation "1953?" above the date of birth, indicating that the interviewer took note of the correction. Moreover, the applicant was instructed to submit a birth certificate to confirm that her date of birth is March 20, 1953. The applicant timely submitted the birth certificate.

The applicant's naturalization certificate does not conform to the facts indicated in the application for naturalization.

The AAO acknowledges that the applicant's file also contains a birth certificate listing 1957 as her year of birth, and that her immigration file contains documents bearing the March 20, 1957 date of birth. Nevertheless, as noted above, the date of birth listed on the certificate of naturalization does not conform to the date indicated in the naturalization application or the birth certificate that was in the record at the time of the applicant's naturalization. Thus, it appears that there was a clerical error in the preparation of the applicant's certificate and a correction of the naturalization certificate is justified pursuant to the regulation at 8 C.F.R. § 338.5. Accordingly, this matter will be returned to the director for the issuance of a certificate of naturalization listing March 20, 1953 as the applicant's date of birth.

*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 been met.

**ORDER:** The appeal is sustained. The matter is returned to the Nebraska Service Center for issuance of a replacement certificate of naturalization.