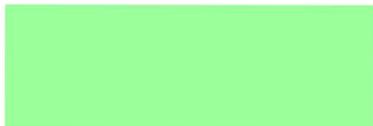




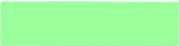
**U.S. Citizenship
and Immigration
Services**

(b)(6)

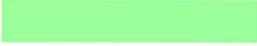


Date: **NOV 03 2014**

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

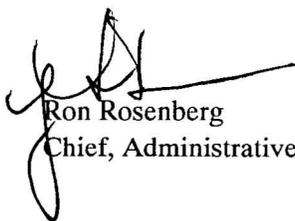
ON BEHALF OF APPLICANT:

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.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

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

Pertinent Facts and Procedural History

The applicant is a native of Turkey 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 September [REDACTED] to September [REDACTED].

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 provided the September [REDACTED] date of birth in his naturalization application and had failed to establish that a clerical error was made in the preparation of the certificate.

On appeal, the applicant requests that his certificate of naturalization be changed to list September [REDACTED] as his date of birth. The applicant submits a copy of his birth certificate, indicating his date of birth is September [REDACTED].

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 his date of birth:

- A "Translation of Vital Statistics Records and of Turkish Birth Abstract," reflecting a November 25, 1972 registration date and indicating that the applicant was born on September [REDACTED]
- A birth certificate submitted in conjunction with the applicant's Immigrant Visa Application, listing his date of birth as September [REDACTED]
- The applicant's Form OF-157, Medical Examination, dated in 1989, listing the applicant's date of birth as September [REDACTED]
- The applicant's Immigrant Visa Application, listing September [REDACTED] as the applicant's date of birth;
- An Immigrant Visa and Alien Registration, listing the applicant's date of birth as September [REDACTED]
- The applicant's Form N-400, Application for Naturalization, listing his date of birth as September [REDACTED]
- The applicant's Naturalization Processing Sheet, listing his date of birth as September [REDACTED] and [REDACTED]
- The applicant's Certificate of Naturalization listing his date of birth as September [REDACTED]

A *de novo* review of the record demonstrates 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 submitted a birth certificate with the September [REDACTED] date of birth with his immigrant visa application. His immigrant visa application erroneously listed September [REDACTED] as his date of birth, and was a clerical error that continued through his naturalization process. Therefore, 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 September [REDACTED] as the applicant's date of birth.¹

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.

¹ The applicant also claims that his height is incorrectly listed as 5'9" when he is 5'10".