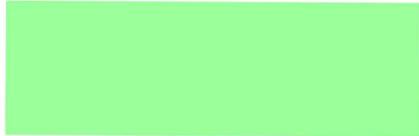


(b)(6)

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

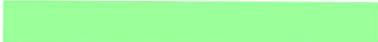


U.S. Citizenship
and Immigration
Services



Date: **OCT 10 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:

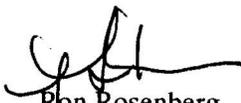
SELF-REPRESENTED

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,



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 dismissed and the application will remain denied.

Pertinent Facts and Procedural History

The applicant is a native of Bangladesh 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 February 2, 1961 to November 3, 1974.

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 February 2, 1961 date of birth in her 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 her certificate of naturalization be changed to list November 3, 1974 as her date of birth. She explains that she requested that the date of birth be changed to November 3, 1974 during her naturalization interview, but that the officer never took any action on her request.

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:

- Two birth affidavits, signed in Bangladesh in [REDACTED] respectively, indicating that the applicant was born on February [REDACTED];
- An Alien Relative Petition (Form I-130) filed on the applicant's behalf, listing her date of birth as February [REDACTED];
- A Form I-864, Affidavit of Support under Section 213A of the Act, listing the applicant's date of birth as February [REDACTED];
- The applicant's Forms OF157 and OF230, Application for Immigrant Visa and Alien Registration, listing February [REDACTED] as the applicant's date of birth;
- An Immigrant Visa and Alien Registration, listing the applicant's date of birth as February [REDACTED];
- The applicant's Form N-400, Application for Naturalization, listing her date of birth as February [REDACTED];
- The applicant's Petition for Name Change and Form N-649, Certificate Preparation Sheet and Oath Declaration, listing her date of birth as February [REDACTED];
- The applicant's Certificate of Naturalization listing her date of birth as February [REDACTED];
- The applicant's permanent residence card (Form I-551), listing her date of birth as February [REDACTED];
- The applicant's California Driver's License and Identification Card, issued in 2007, indicating her date of birth as February [REDACTED];
- The applicant's California Driver's License and Identification Card, issued in 2013 and 2010, respectively, indicating her date of birth as November [REDACTED] and,
- The first page of the applicant's U.S. passport, indicating her date of birth as November [REDACTED]

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 February [REDACTED] date of birth throughout her naturalization and immigration process. The applicant now states that she attempted to correct her date of birth during the naturalization interview, but a red check mark next to Part 3, Question B (date of birth) in her Form N-400, Application for Naturalization, reflects that she verified that February [REDACTED] was her date of birth. The applicant's signature in Part 13 of the Form N-400 indicates that she swore or affirmed that the contents of her naturalization application were true and correct. Only now does she submit her U.S. passport and recent California Driver's License and Identification Card showing her date of birth as November [REDACTED]. She does not explain the basis for the change in the date of birth listed in her California Driver's License and U.S. passport. The

record does not contain a birth certificate or any contemporaneous document issued at the time of her birth, reflecting a November [REDACTED] date of birth.

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 naturalization. As noted above, the February [REDACTED] date was provided by the applicant in her naturalization application, and there is no evidence in the record that a correction was made during the naturalization proceedings. More importantly, the applicant has submitted no documentation to demonstrate that she was born on November [REDACTED] as now claimed.

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 February [REDACTED] date of birth on the applicant's certificate of naturalization. In addition to the numerous documents supporting the February [REDACTED] 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.