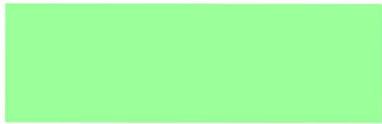




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: OFFICE: NEBRASKA SERVICE CENTER

FILE:

OCT 17 2014

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. 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 Iran 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 [REDACTED]

The director reviewed the applicant's record and determined that the applicant provided the [REDACTED] date of birth during the naturalization process, and that he failed to establish that a clerical error was made in the preparation of the certificate. A correction to his naturalization certificate was therefore not justified. The Form N-565 was denied accordingly.¹

On appeal the applicant admits, through counsel, that he stated his date of birth was [REDACTED] on his naturalization application and during his naturalization process. He asserts, however, that the birth certificate he received from Iranian authorities contained an incorrect birth date; it was too difficult to request a corrected birth certificate during his naturalization process; and evidence establishes that [REDACTED] is his true birth date. He indicates further that a Nevada court order recognizes his date of birth as [REDACTED] his naturalization certificate could have been corrected on this basis under the former 8 C.F.R. 334.16(b) (as in effect in July 2011); U.S. Citizenship and Immigration Service (USCIS) policy allows for corrections to certificates of citizenship when a court order recognizes a date of birth change; and USCIS should correct his certificate of naturalization in the interest of justice.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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:

- (a) *Application.* Whenever a Certificate of Naturalization has been delivered which does not conform to the facts shown on the application for

¹ The applicant filed a previous Form N-565 on February 14, 2011. The application was denied as abandoned on June 29, 2011.

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 applicant became a naturalized U.S. citizen on September 6, 1984. His administrative record reflects that during his naturalization proceedings the applicant claimed that his date of birth was [REDACTED]. Specifically, the record contains the following documents listing the applicant's date of birth as [REDACTED]

An Iranian identity card for the applicant, registered on September 4, 1982;

An Application for Naturalization (Form N-400) signed by the applicant and filed on October 25, 1983;

The applicant's Petition for Naturalization (Form N-405);

An undated Biographic Information Form (Form G-325A) signed by the applicant, and reviewed by the Service in June 1984; and

An Application by a Lawful Permanent Resident for an Alien Registration Receipt Cards (Form I-90), signed by the applicant on October 17, 1982 and on January 14, 1984.

The record now includes an Iranian birth certificate for the applicant listing his date of birth as [REDACTED]. This certificate was submitted for the first time with the applicant's Form N-565, in February 2011, twenty-six years after the applicant's naturalization as a U.S. citizen.

A *de novo* review of the record demonstrates that the [REDACTED] date of birth contained on the applicant's naturalization certificate conforms to the information provided by the applicant in his Form N-400, and is not a result of a clerical error made by USCIS. The applicant's Form N-400 contains several redline changes and checkmarks indicating that during his naturalization interview

the applicant attested to, and corrected where necessary, the information initially provided. Specifically, Item 3 on the Form N-400 contains a checkmark indicating that the applicant confirmed that his date of birth was [REDACTED]. The Form N-400 also contains an affidavit, signed by the applicant on July 9, 1984, upon completion of his naturalization interview, swearing that the contents of the application were true and correct. The record reflects further that the applicant claimed the [REDACTED] date of birth throughout his naturalization process; moreover, the applicant does not contest that he claimed the [REDACTED] date of birth on his naturalization application and throughout the naturalization process.

The September 2013 Nevada district court order recognizing the applicant's date of birth as [REDACTED] cannot form the basis for the issuance of a replacement naturalization certificate where neither section 338 of the Act nor the implementing regulations at 8 C.F.R. § 338 gives USCIS the authority to correct a date of birth on a naturalization certificate absent clerical error. *See* 8 C.F.R. § 338.5(a). The applicant's citation to former 8 C.F.R. § 334.16(b) is misplaced, as that regulation was deemed obsolete and removed. *See* 72 Fed. Reg. 53801 (August 29, 2011). Finally, the applicant points to the USCIS Policy Manual, which provides for the issuance of a replacement certificate of citizenship if a U.S. state court order has recognized a new date of birth. Although section 320(c) of the Act, 8 U.S.C. § 1431(c), provides that a certificate of *citizenship* may be amended to reflect the date of birth indicated on a State court order, no such provision exists for a certificate of *naturalization*. Neither the statute nor the regulation allows USCIS to correct a date of birth on a certificate of naturalization where there has not been a clerical error attributable to USCIS. *See* 8 C.F.R. § 338.5(a). Here, the record fails to establish that there was a USCIS error in preparing the applicant's certificate of naturalization, such that he is entitled to a replacement certificate of naturalization reflecting a [REDACTED] date of birth. The appeal shall therefore be dismissed.

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.