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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: **OCT 17 2014** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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 Director of the Texas 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 Guatemala 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 [REDACTED] to February 10, 1953.

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

On appeal, the applicant submits a birth certificate reflecting that her birth date is February [REDACTED] as well as a Guatemalan identification card and a marriage certificate containing the [REDACTED] birth date; and she requests that a new naturalization certificate be issued with her February [REDACTED] date of birth.

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 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

In the present matter the applicant naturalized on May 19, 2006. Her administrative record reflects that during her immigration and naturalization proceedings the applicant claimed that her date of birth was February [REDACTED]. Specifically, the record contains the following documents listing the applicant's date of birth as February [REDACTED]:

A Guatemalan birth certificate for the applicant registered in 1991;

An Application to Register Permanent Residence or Adjust Status (Form I-485) signed by the applicant on July 15, 1996, and a Supplement A to Form I-485, signed by the applicant on July 15, 1996;

A Biographic Information Form (Form G-325A) signed by the applicant on July 15, 1996;

The applicant's Memorandum of Creation of Record of Lawful Permanent Residence (Form I-181), dated October 10, 1997, and a Resident Alien card signed by the applicant; and

An Application for Naturalization (Form N-400) signed by the applicant on August 30, 2005.

The record now also includes a Guatemalan birth certificate for the applicant listing her date of birth as February [REDACTED]. This certificate is submitted for the first time with the applicant's Form N-565, on August 22, 2013, seven years after the applicant's naturalization as a U.S. citizen.

A *de novo* review of the record demonstrates that the February [REDACTED] date of birth contained on the applicant's naturalization certificate conforms to the information provided by the applicant in her Form N-400, and is not a result of a clerical error made by U.S. Citizenship and Immigration Services (USCIS). The applicant's Form N-400 contains several redline changes and checkmarks indicating that during the naturalization interview the applicant attested to, and corrected where necessary, the information initially provided. Specifically, Part 3, item B of the Form N-400 contains a checkmark indicating that the applicant confirmed that her date of birth was February [REDACTED]. The Form N-400 also contains an affidavit, signed by the applicant on April 26, 2006 upon completion of her naturalization interview, swearing that the contents of the application were true and correct. The record reflects further that the applicant claimed the February 10, 1951 date of



birth throughout her naturalization process and during her process to become a U.S. lawful permanent resident.

Neither the statute nor the regulation allows USCIS to correct a date of birth 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. 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.