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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: NEBRASKA 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 Nebraska Service Center (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 Mexico 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 July [REDACTED] to July [REDACTED].

The director reviewed the applicant's record and determined that the applicant provided the July [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 and the Form N-565 was denied accordingly. On appeal, the applicant submits a birth certificate indicating that she was born in [REDACTED], Mexico on July [REDACTED], and medical documentation reflecting that her birth date is July [REDACTED]. On this basis, she requests a new naturalization certificate reflecting that she was born on July [REDACTED].

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 June 20, 1996. The applicant's administrative record reflects that throughout her immigration and naturalization proceedings the applicant claimed that her date of birth was July [REDACTED]. Specifically, the record contains the following documents listing the applicant's date of birth as July [REDACTED]

A birth certificate for the applicant issued in [REDACTED] by the State of Guerrero, Mexico;

An immigrant visa application signed by the applicant on April 8, 1975, and an Immigrant Visa and Alien Registration form, reflecting the applicant's admission into the United States as a permanent resident on May 3, 1975;

Two permanent residence card petitions (Form I-90) signed by the applicant on October 27, 1977 and March 22, 1979;

A Biographic Information Form (Form G-325A) signed by the applicant on March 7, 1987;

An Application to File Petition for Naturalization (Form N-400) signed by the applicant on April 27, 1995; and

The applicant's Application for Change of Name (Form N-5), dated March 4, 1996.

The record now also includes a birth certificate for the applicant from the State of [REDACTED] Mexico, listing her date of birth as July [REDACTED].¹ This certificate is submitted for the first time with the applicant's Form N-565, on October 28, 2013, eighteen years after the applicant's naturalization as a U.S. citizen.

A *de novo* review of the record demonstrates that the July [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 the applicant attested to, and corrected where necessary, the information initially provided. Specifically, Part 1 of the Form N-400 contains a checkmark indicating that the applicant confirmed during her naturalization interview that her date of birth was July [REDACTED]. The Form

¹The first birth certificate contained in the record for the applicant was issued in the State of [REDACTED] Mexico.

N-400 also contains an affidavit, signed by the applicant on March 14, 1996, 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 July [REDACTED] date of birth throughout 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.