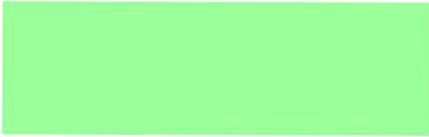


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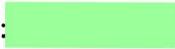
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



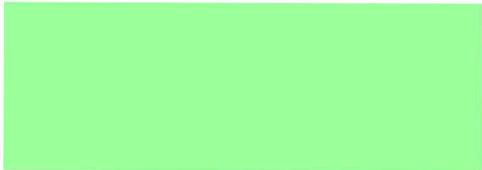
Date: **OCT 27 2014** Office: NEBRASKA SERVICE CENTER

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:



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 (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 August [REDACTED] to August [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 August [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, through counsel, requests that his certificate of naturalization be changed to list August [REDACTED] as his date of birth. In his appeal brief, counsel cites to 8 C.F.R. § 334.16(b), a regulation, repealed in 2011, that pertained to judicial amendments of certificates of naturalization. See Appeal Brief. Counsel also cites several district court and unpublished decisions in support of his claim that corrections to certificates of naturalization are permitted. *Id.*

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.

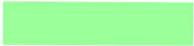
Analysis

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:

- The Forms I-20 and I-94, listing the applicant's date of birth as August [REDACTED]
- A Form G-325, Biographic Information, completed by the applicant in 1992, listing the applicant's date of birth as August [REDACTED]
- A Form I-751, Joint Petition to Remove Conditional Basis of Alien's Permanent Resident Status, listing the applicant's date of birth as August [REDACTED]
- The applicant's Memorandum of Creation of Record of Lawful Permanent Residence, listing the applicant's date of birth as August [REDACTED]
- The applicant's Form N-400, Application for Naturalization, listing his date of birth as August [REDACTED]
- The Form N-468, Naturalization Processing Sheet, listing the applicant's date of birth as August [REDACTED]
- The applicant's Certificate of Naturalization, listing his date of birth as August [REDACTED]
- The applicant's Certified Translation of An Identity Certificate from Farsi, indicating his date of birth as August [REDACTED] and registration date of September [REDACTED] and
- The first page of the applicant's Iranian passport, indicating his date of birth as August [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 August [REDACTED] date of birth throughout his naturalization and immigration processes. The applicant did not claim the August [REDACTED] date of birth until years after the issuance of his certificate of naturalization. The red check mark next to Part 3, Question B (date of birth) in his Form N-400, Application for Naturalization, reflects that he verified that August [REDACTED] was his date of birth during his naturalization interview. The applicant's signature on page 4 of the Form N-400 indicates that he swore or affirmed that the contents of his naturalization application were true and correct.

The applicant now submits a copy of his Iranian passport and a Certified Translation of an Identity Certificate from Farsi listing his date of birth as August [REDACTED]. He claims, through counsel, that a correction of his certificate of naturalization is authorized by 8 C.F.R. § 334.16(b) and pertinent case law. Counsel'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). The repealed regulation also did not pertain to the authority of USCIS to correct a certificate of naturalization. The case law cited is not precedential and relates to the applicability of the repealed regulation, citing the authority of courts to correct a certificate of naturalization.



The regulation at 8 C.F.R. § 338.5(a) permits a change to a date of birth, but only when it is established that there was a clerical error attributable to USCIS in the preparation of the certificate. The applicant's record fails to establish that there was any error in preparing the applicant's certificate of naturalization. As noted above, the August [REDACTED] date was provided by the applicant in his naturalization application, and there is no evidence in the record that a correction was requested during the naturalization proceedings.

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