



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: Office: NEBRASKA SERVICE CENTER

APR 20 2015

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Replacement Naturalization 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 that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the Application for Replacement Naturalization/Citizenship Document and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Iran, 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 16, [REDACTED] to February 16, [REDACTED].

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 claimed the date of birth on the certificate at the time of naturalization. The application was denied accordingly.

On appeal, the applicant requests that her Certificate of Naturalization be changed to conform to her correct date of birth, indicating that the incorrect date was the result of clerical errors.

Counsel for the applicant notes that Federal District Courts have granted applications to amend in the absence of clerical error, though the courts also acknowledge that USCIS cannot, by regulation change the certificate absent clerical errors. Counsel also asserts that there were clerical errors on the part of Iranian and U.S. officials. He indicates that the first clerical error was a miscalculation of the translation from the Persian calendar to the Gregorian calendar in the issuance of her Iranian passport. The correct year should have been [REDACTED] not [REDACTED]. The second clerical error was performed by the U.S. official who failed to ascertain her exact date of birth when her U.S. visa was issued. The third clerical error was by the U.S. official who issued her Permanent Resident Card and the fourth by the U.S. official who issued her Naturalization Certificate.

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.

Based on the evidence in the record, the applicant has not established that her Certificate of Naturalization, which states that her date of birth is February 16, [REDACTED] contains clerical errors attributable to U.S. Citizenship and Immigration Services (USCIS). Here, the birth date on the applicant's Certificate of Naturalization conforms to the birth date stated in her Application to File Petition for Naturalization (Form N-400). Additionally, the record contains other documents with the February 16, [REDACTED] date of birth, including the applicant's: Form I-94; Form G-325A, Biographic Information, from 1984, 1985 and 1991; Form N-21, Citizen Applicant Information for the United States District Court; Form I-589, Request for Asylum in the United States; and Form I-485, Application for Status as Permanent Resident.¹

We acknowledge that the record includes a translation of a birth certificate showing the applicant's date of birth to be February 16, [REDACTED]. However, there was no reason to doubt the date of birth the applicant included and affirmed on her various applications, including her application for naturalization, so no clerical errors were made in the preparation of her certificate. USCIS has no authority to change the applicant's Certificate of Naturalization. *See* 8 C.F.R. § 338.5.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

¹ The applicant's Form I-485 initially noted February 16, [REDACTED] as her date of birth. This was corrected to [REDACTED] at the time of her interview. At the conclusion of the interview the applicant signed the Form 1-485 affirming that the contents were true and that the corrections were made at her request.