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

(b)(6)

U.S. Citizenship and Immigration Services

Date: JAN 13 2015 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:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (the director) denied the Application for Replacement Citizenship/Naturalization Document (N-565), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Pertinent Facts and Procedural History

The applicant is a native of Peru 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 June to June .

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 June 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 requests that his certificate of naturalization be changed because he recently found out by inquiring with his former high school in Peru that another birth certificate existed, listing a June date of birth. *See* Statement of the Application on Form I-290B, Notice of Appeal or Motion.

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. The applicant's administrative record contains the following documents relevant to his date of birth:

- A copy of birth certificate that the applicant claims was submitted to enroll him in high school in Peru in 1949, indicating that the applicant was born on June ;
- A certificate listing the applicant's date of birth as June submitted with the applicant's immigration visa, without a translation;
- The applicant's Petition for Naturalization and Application to File Petition for Naturalization, listing his date of birth as June ;
- The applicant's Immigrant Visa Application, listing his date of birth as June
- A Form I-90, listing the applicant's date of birth as June ; and
- The applicant's Certificate of Naturalization listing her date of birth as June

A *de novo* review of the record demonstrates that the date of birth indicated on the certificate of naturalization is not a result of a clerical error made by U.S. Citizenship and Immigration Services (USCIS). The applicant claimed the June date of birth throughout his naturalization and immigration processes. The applicant did not claim the June date of birth until years after the issuance of his certificate of naturalization. The red check mark next on his Form N-400, Application to File Petition for Naturalization, reflects that he verified that June 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 June date of birth appears in the applicant's immigration documents, and in the certificate of birth submitted with his immigrant visa application.

The regulation at 8 C.F.R. § 338.5(a) permits a change to a date of birth on a naturalization certificate, 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 he did not discover the birth certificate with a June date of birth until years after he naturalized.

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 USICS made a clerical error when placing the June date of birth on the applicant's certificate of naturalization. In addition to the numerous documents supporting the June 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.