



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

Date: **JAN 14 2015** 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:

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.

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 sustained.

*Pertinent Facts and Procedural History*

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 April [REDACTED] to May [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 provided the April [REDACTED] date of birth in her 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 her certificate of naturalization be changed to list May [REDACTED] as her date of birth. The applicant submits a copy of her birth certificate, indicating her date of birth is May [REDACTED]. The applicant, through counsel, maintains that the April [REDACTED] date was listed on her permanent residence documents in error. *See* Appeal Brief. The applicant indicates that she was a young child when she immigrated and was unaware of the error in her immigration documents. *Id.*; *see also* Declaration of Sima Talaiefar. She further states that the error was due to a poor translation of her birth certificate, and that she listed May [REDACTED] as her date of birth in her naturalization application. *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. The applicant's administrative record contains the following documents relevant to her date of birth:

- A translated document titled "Identification Certificate" indicating that the applicant was born on May [REDACTED]
- A translation of the applicant's birth certificate submitted in conjunction with the applicant's permanent residence application, listing her date of birth as April [REDACTED]
- A translation of the applicant's mother's "Identification Certificate" including a notation regarding the applicant's date of birth, listing it as May [REDACTED]
- The applicant's California driver licenses, listing her date of birth as May [REDACTED]
- The applicant's Marriage Certificates, listing her date of birth as May [REDACTED]
- The applicant's social security records, listing her date of birth as May [REDACTED]
- A receipt from [REDACTED] listing the applicant's date of birth as May [REDACTED]
- The applicant's Form I-130, Petition for Alien Relative, listing her date of birth as April [REDACTED]
- The applicant's Form I-485, Application for Status as Permanent Residence, listing her date of birth as April [REDACTED]
- The applicant's Form I-181, Memorandum of Creation of Record of Lawful Permanent Residence, listing her date of birth as April [REDACTED]
- The applicant's Lawful Permanent Resident card, listing her date of birth as April [REDACTED]
- The applicant's Fingerprint Card, used in connection with her naturalization application, listing May [REDACTED] as the applicant's date of birth;
- The applicant's Form N-400, Application for Naturalization, listing the applicant's date of birth as May [REDACTED]
- The applicant's Naturalization Processing Sheet, listing her date of birth as April [REDACTED]
- A Certificate of Naturalization listing the applicant's date of birth as May [REDACTED] and
- The applicant's Certificate of Naturalization listing her date of birth as April [REDACTED]

A *de novo* review of the record demonstrates 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 submitted a birth certificate with her permanent residence application, erroneously translated to indicate that her date of birth was April [REDACTED]. The clerical error continued through her naturalization process, despite her attempt to correct the date of birth. The applicant originally listed May [REDACTED] as her date of birth in the naturalization application. Although the date of birth is crossed off in red ink and corrected to April [REDACTED], there is no indication that the translation error was resolved during the naturalization interview. Therefore, a correction of the naturalization certificate is justified pursuant to the regulation at 8 C.F.R. § 338.5.

Accordingly, this matter will be returned to the director for the issuance of a certificate of naturalization listing May [REDACTED] as the applicant's date of birth.

*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 been met.

**ORDER:** The appeal is sustained. The matter is returned to the Nebraska Service Center for issuance of a replacement certificate of naturalization.