



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 18 2015

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and came before the Administrative Appeals Office (AAO) on appeal. The AAO remanded the matter and it is now before the AAO upon certification of the director's subsequent adverse decision. The decision of the director will be withdrawn and the appeal will be sustained.

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 [REDACTED] 1957, to [REDACTED] 1958.

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 claimed the date of birth on the certificate under oath during his interview as being true and correct. The application was denied accordingly.

On appeal, the applicant asserts that his certificate of naturalization contains an erroneous date of birth and requests that it be reissued to reflect his correct date of birth, [REDACTED] 1958. The applicant submits an Iranian identification certificate indicating that his correct date of birth is [REDACTED] 1958.

The record includes, but is not limited to, immigration forms related to the applicant's applications for lawful permanent resident status and citizenship; a birth and baptism certificate issued by the [REDACTED] in 1978; an identification certificate issued by the Ministry of the Interior, National Organization for Registration of Civil Status, of the Islamic Republic of Iran in 1958; and a driver's license from California. The entire record was reviewed and considered in rendering a decision on appeal.

In our decision dated March 24, 2014, we withdrew the director's decision indicating that the applicant's certificate of naturalization did not conform to the facts on his N-400, Application for Naturalization (N-400) and found that the record reflected the applicant's certificate of citizenship contained clerical errors attributable to U.S. Citizenship and Immigration Services (USCIS). However, we noted that the date of birth, as altered on the N-400, is not the one appearing on his certificate or the one now claimed by the applicant. We concluded he is not entitled to a replacement certificate of naturalization with a [REDACTED] 1958, date of birth.

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 in 8 C.F.R. § 338.5 provide, in part, that:

- (a) 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 by the naturalized person.

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- (e) 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.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In our prior decision, we indicated that the date of birth listed on the applicant's Form N-400 is [REDACTED] 1958. We acknowledged a correction made in black ink on the Form N-400 changed the applicant's day of birth from [REDACTED] 1958, to [REDACTED], 1958. While the applicant signed the Form N-400, attesting to the validity of its contents, on January 4, 2000, and also signed the Form N-649, Certificate Preparation and Oath Declaration (Form N-649), listing [REDACTED] 1957, as his date of birth on June 28, 2000, the Director has not explained why two different birth years, 1957 and 1958, were accepted in these documents, and why a black-ink alteration changing the applicant's day of birth from [REDACTED] to [REDACTED] appears on his Form N-400.

The N-400 indicates that the applicant originally submitted that form with his date of birth as [REDACTED] 1958. A black-ink alteration changed his date of birth from [REDACTED] to [REDACTED] 1958. The date of birth [REDACTED] 1958, does not appear elsewhere in the record

The administrative record reflects that throughout the applicant's immigration and naturalization proceedings, the applicant claimed his date of birth was [REDACTED] 1957, which conforms to his naturalization certificate. Specifically, the following documents lists the applicant's date of birth as [REDACTED] 1957: Form N-649; Form I-181, Memorandum of Creation of Record of Lawful Permanent Residence; the applicant's permanent resident card; the applicant's Form I-485, Application for Status as Permanent Resident; and an [REDACTED] birth and baptism certificate issued in 1978. In addition, the applicant's signed Form G-325A, Biographic Information, indicates that his birthdate is [REDACTED] 1957.

The record also includes two documents showing the applicant's date of birth is [REDACTED] 1958: an identification certificate issued by Iran's Ministry of the Interior issued in 1958 and a driver's license from California. The applicant submitted these documents on November 14, 2014, in response to a request for evidence, 14 years after his naturalization. The applicant asserts that his Form N-400 was altered after his interview, because the correction for his date of birth was not numbered, as were the other corrections on Form N-400. He posits that the day of his birth may have been changed because it did not match his permanent resident card. In addition, the applicant explains that his birthdate was incorrectly translated from the Persian to the Gregorian calendar in 1978, to [REDACTED], 1957, and that as a result this incorrect birthday appears throughout his immigration applications.

A *de novo* review of the record demonstrates that although the [REDACTED], 1957, date of birth on the applicant's naturalization certificate conforms to the information he provided in Forms N-649 and I-181, the applicant listed the year 1958 on his N-400, which resulted in an apparent change of his day of birth instead of his year of birth. This change, moreover, was not numbered as a correction to form that was reviewed with the applicant at the conclusion of the interview. As such, we conclude that USCIS made a clerical error in processing the applicant's N-400.

Accordingly, this matter will be returned to the Director for the issuance of a certificate of naturalization listing [REDACTED] 1958 as the applicant's date of birth.

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 decision will be returned to the Nebraska Service Center for issuance of a replacement certificate of naturalization.