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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R-T-C-O-

DATE: APR. 28, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM N-565, APPLICATION FOR REPLACEMENT
NATURALIZATION/CITIZENSHIP DOCUMENT

The Applicant, a native of Nigeria and a naturalized citizen of the United States, seeks a replacement Naturalization document. *See* Immigration and Nationality Act (the Act) § 338, 8 U.S.C. § 1449, and 8 C.F.R. § 338.5. Section 338 of the Act provides the statutory authority relating to the contents of a Certificate of Naturalization. A U.S. citizen may request a new Certificate if the citizen can show that her Certificate of Naturalization was issued with incorrect information because of a clerical error by U.S. Citizenship and Immigration Services (USCIS). The Applicant seeks to have her Certificate of Naturalization corrected to reflect a change in her date of birth from [REDACTED] to [REDACTED].

The Director, Nebraska Service Center, denied the application. The Director concluded that the Applicant had claimed her date of birth as [REDACTED] at the time of naturalization and determined that a correction to her Certificate of Naturalization was not justified. The Form N-565, Application for Replacement Naturalization/Citizenship Document, was denied accordingly.

The matter is now before us on appeal. On appeal, the Applicant contends that when she applied to attend school in the United States in 1975, the Government of Nigeria issued a passport with the incorrect date of birth, and submits documentation to indicate that her date of birth is [REDACTED].

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking replacement of Certificate of Citizenship to reflect a change in her date of birth. Section 338 of the Act provides the statutory authority relating to the contents of a Certificate of Naturalization. The corresponding regulations at 8 C.F.R. § 338 regarding the execution and issuance of Certificates of Naturalization include provisions for the correction of certificates at 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

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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.

II. ANALYSIS

The Director denied the Applicant's request for a replacement Certificate of Naturalization, finding that the Applicant did not demonstrate there was a clerical error made in preparing the certificate or that the date of birth on the Certificate did not conform to the facts as shown on her original application for Naturalization. On appeal, the Applicant states that in 1975, before she came to the United States, she was issued a Nigerian passport with an incorrect date of birth, and it was almost impossible to get one reissued with the correct date of birth in time for her trip. The Applicant states that the incorrect date of birth on the Certificate of Naturalization occurred because of this error in 1975, and it was not due to a USCIS clerical error. We affirm that the Applicant has not demonstrated she qualifies for a corrected Certificate of Naturalization under 8 C.F.R. 338.5.

The regulation at 8 C.F.R. § 338.5(a) permits a change to a date of birth on a Certificate of Naturalization when it is established that there was a clerical error attributable to USCIS in the preparation of the certificate.

The record reflects that the Applicant filed Form N-400, Application to File Petition for Naturalization, in 1991, and was interviewed for her naturalization in 1992. The Form N-400 listed her date of birth as [REDACTED] and the Applicant took an oath at the time of her naturalization interview affirming the contents of the application to be true.¹

In 2015, the Applicant filed Form N-565, claiming that her true date of birth is [REDACTED] and requesting a replacement Certificate of Naturalization to reflect the [REDACTED] date of birth. In support of the application, the Applicant submitted a document from the National Population Commission in Nigeria dated May 26, 2014, which states her date of birth is [REDACTED]

¹ Additionally, the record contains other documents with the [REDACTED] date of birth, including: the Applicant's Form I-20B, Certificate of Eligibility for Nonimmigrant (F-1) Student Status; the Applicant's Form I-102, Application by Nonimmigrant Alien for Replacement of Arrival Document; the Applicant's Form I-140, Petition to Classify Preference Status of Alien on Basis of Profession or Occupation; the Applicant's Form I-485, Application for Status as Permanent Resident; and two Forms G-325A, Biographic Information Form, filed by the Applicant.

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The Director determined that the Applicant did not establish that a clerical error was made in preparing the certificate of naturalization or that the date of birth does not conform to the facts as shown on the Applicant's original application for naturalization.

On appeal, the Applicant contends that when she applied to attend school in the United States in 1975, the Government of Nigeria issued a passport with the incorrect date of birth. The Applicant submits a copy of her current passport with her date of birth as [REDACTED] and a sworn statement by her mother dated October 22, 1999, stating that the Applicant was born on [REDACTED]

However, because the Applicant acknowledged her birth date as [REDACTED] on her naturalization application, and she admits there was no clerical error in the preparation of the Applicant's certificate, pursuant to 8 C.F.R. § 338.5, USCIS has no authority to change the Applicant's Certificate of Naturalization. Furthermore, the correction is not justified under 8 C.F.R. § 338.5(e) as the Applicant later alleged that the [REDACTED] date of birth, which she claimed was her correct date of birth at the time of naturalization, was not in fact her date of birth at the time of naturalization. We therefore concur with the Director's decision to deny the application.

Based on the above, we conclude that the Applicant's Certificate of Naturalization does not contain incorrect information which resulted from USCIS clerical error. Accordingly, the Applicant is not entitled to a replacement certificate.

III. CONCLUSION

The burden of proof in these proceedings rests with the Applicant, and a replacement Certificate of Naturalization may be issued only if it "does not conform to the facts shown on the application for naturalization, or a clerical error was made in preparing the certificate" *See* 8 C.F.R. 338.5(a), *supra*. As the Applicant has not provided documentation to show that her date of birth on the Certificate of Naturalization was printed incorrectly as a result of an error by USCIS, the Applicant has not established eligibility for issuance of a new Certificate of Naturalization. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of R-T-C-O-*, ID# 16067 (AAO Apr. 28, 2016)