



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

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

MATTER OF M-J-A-

DATE: DEC. 1, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Applicant, a native of Mexico and a naturalized U.S. citizen, seeks a replacement Certificate of Naturalization to reflect a different date of birth. *See* Title 8, Code of Federal Regulations, section 338.5 (8 C.F.R. § 338.5). A U.S. citizen may request a new certificate if the citizen can show that his or her Certificate of Naturalization was issued with incorrect information because of a clerical error by U.S. Citizenship and Immigration Services (USCIS).

The Director, Texas Service Center, denied the application. The Director concluded that the Applicant was not eligible for a replacement certificate because the date of birth printed on the certificate was the same as in the Applicant's USCIS record, and USCIS had no authority to issue a replacement certificate with a date of birth other than that which was established at the time of naturalization. The Director further determined the Applicant did not prove that a clerical error was made in preparing the certificate, or that the Applicant's date of birth on the certificate did not conform to the facts as shown on her naturalization application.

The matter is now before us on appeal. On appeal, the Applicant claims that the denial was erroneously and improvidently issued. Specifically, the Applicant asserts that the Director should have issued a request for evidence (RFE) or a notice of intent to deny (NOID) prior to final adjudication, and that the Director did not forward a copy of the denial to the Applicant's attorney of record.¹ The Applicant claims that the evidence shows that USCIS has the authority to correct the "clerical error" on her Certificate of Naturalization.

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

¹ The record reflects that the Director accepted the Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, submitted with the Form N-565. Accordingly, the Director should have sent all communications regarding the Form N-565 to the Applicant and her attorney. The fact that the Applicant's attorney may not have received the denial notice does not affect our adjudication on appeal, as the Applicant timely appealed the denial. Therefore, we will not address the issue of the claimed denial non-delivery on appeal.

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I. LAW

The Applicant is seeking replacement of Certificate of Naturalization with a corrected date of birth. The regulations regarding the correction of Certificates of Naturalization in 8 C.F.R. § 338.5, provide, in part:

(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.

The regulations at 8 C.F.R. § 103.2(b) provide, in pertinent part:

Evidence and processing. (1) *Demonstrating eligibility.* An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. . . .

....

(8)(ii) *Initial evidence.* If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

II. ANALYSIS

The Applicant was issued a Certificate of Naturalization with [REDACTED] 1950, date of birth. The Applicant asserts that this date of birth is incorrect and requests a replacement certificate to show that she was born on [REDACTED] 1950.

The issues before us are whether the Director was required to issue an RFE or NOID to the Applicant before denying the application, and whether the Applicant has established that the date of

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birth printed on her Certificate of Naturalization is incorrect due to USCIS error, or that it is different from the date of birth listed on her application for naturalization.

The Director denied the application finding that because USCIS records, including the Applicant's application for naturalization, reflected that she was born on [REDACTED] 1950, the Applicant was not entitled to a new certificate with a different date of birth.

The Applicant states that the Director incorrectly determined that the date of birth printed on the certificate was the same as in her USCIS record, as some of the documents from her immigration file she obtained through the Freedom of Information Act (FOIA) reflect her correct date of birth, [REDACTED] 1950. In support of this statement, the Applicant submits copies of several documents dated between 1987 and 1989, including Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), Form I-181, Memorandum of Creation of Record of Lawful Permanent Residence, two Forms I-693, Medical Examination of Aliens Seeking Adjustment of Status, and Form FD-258, with her fingerprints. The Applicant claims that because her date of birth on these documents is listed as [REDACTED] 1950, she is entitled to a replacement certificate with this date of birth.

The Applicant acknowledges that some of the documents she had previously provided may have contained her incorrect date of birth, [REDACTED] 1950. She states, however, that because of limited formal education she had to rely on a notary to prepare immigration forms for her, and that she did not notice the errors in the date of birth listed on those forms. The Applicant claims that pursuant to USCIS guidance, the Director should have given her an opportunity to submit additional evidence in support of her application to resolve any inconsistencies in the record prior to final adjudication.

Upon review of the entire record, which includes the documents referenced above, various immigration forms, the Applicant's birth certificate, and identity documents, we find that the Applicant is not eligible for issuance of a replacement certificate with the date of birth she requests, [REDACTED] 1950, because she attested in naturalization proceedings that she was born on [REDACTED] 1950, and there was no error by USCIS.

The record reflects that on the Form N-400, Application for Naturalization, the Applicant represented her date of birth as [REDACTED] 1950. The Applicant confirmed this representation during her naturalization interview in 2011, as indicated by the interviewing officer's red check mark by the Applicant's date of birth. The Applicant also signed the Form N-400 at the conclusion of the interview affirming that all information on the form, including the [REDACTED] 1950, date of birth, was correct. Moreover, the record shows that in support of the Form N-400, the Applicant submitted photocopies of her Texas Driver's License, and Form I-551, Permanent Resident Card. Both documents list the Applicant's date of birth as [REDACTED] 1950. The record also contains other immigration forms on which the Applicant represented she was born on [REDACTED] 1950. These forms include Form I-698, Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603), the Applicant filed in 1989, Form I-90 Application by Lawful Permanent Resident for New Alien Registration Receipt Card, filed in 1991, and other

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forms. We acknowledge the Applicant's statement that those forms may have been prepared by someone else; however, they all bear the Applicant's signature confirming the accuracy of the information on the forms. The translated birth certificate, which shows that the Applicant was born on [REDACTED] 1950, and which the Applicant submitted in support of the Form N-565, was not part of the record at the time the Applicant obtained naturalization. There is no evidence to suggest that the Applicant indicated in naturalization proceedings that the date of birth she listed on the Form N-400 was incorrect, or that she attempted to correct it prior to naturalization.

The Applicant has therefore not demonstrated that her Certificate of Naturalization does not conform to the information on the naturalization application or that it contains clerical errors attributable to USCIS.

The Applicant states on appeal that pursuant to 2005 USCIS guidance,² she should have been given an opportunity to submit additional evidence in support of her application. However, the regulations at 8 C.F.R. § 103.2(b)(8)(ii) allow USCIS to exercise its discretion to deny the benefit request for lack of initial evidence or for ineligibility if the totality of the evidence submitted does not meet the applicable standard of proof, and the adjudicator determines that there is no possibility that additional information or explanation will cure the deficiency.³ The regulation at 8 C.F.R. § 338.5(e) does not allow for a correction to be made to a Certificate of Naturalization where the naturalized person later alleges that the date of birth which he or she confirmed to be the correct date of birth at the time of naturalization was not in fact the person's date of birth. Because the Applicant's date of birth on the Certificate of Naturalization was the same as the one she listed on the Form N-400 and confirmed during the interview, we find that the Director properly determined that additional evidence would not have changed the Applicant's ineligibility for a replacement certificate. Accordingly, the Director was not required to issue RFE or NOID before denying the application.

Neither the statute nor the regulations allow USCIS to correct a date of birth on a Certificate of Naturalization for any reason other than clerical error attributable to USCIS.

As discussed above, we find that the information on the Certificate of Naturalization issued to the Applicant conforms to the facts shown on her application for naturalization. Thus, there was no USCIS error in preparation of the certificate. Accordingly, the Applicant is not entitled to a replacement Certificate of Naturalization.

² The Applicant references Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQPRD 70/2, *Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)* (Feb. 16, 2005), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2005/rfe021605.pdf. This memorandum has been superseded by USCIS Policy Memorandum PM-602-0085, *Requests for Evidence and Notices to Deny* (June 3, 2013), <https://www.uscis.gov/laws/policy-memoranda>.

³ See USCIS Policy Memorandum PM-602-0085, *supra*, at 2.

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 demonstrated that her date of birth on the Certificate of Naturalization was printed incorrectly because of USCIS error, the Applicant has not established eligibility for issuance of a new Certificate of Naturalization.

ORDER: The appeal is dismissed.

Cite as *Matter of M-J-A-*, ID# 14261 (AAO Dec. 1, 2016)