



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

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

MATTER OF A-F-M-

DATE: MAY 18, 2016

APPEAL OF NEBRASKA 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 replacement of his Certificate of Naturalization. *See* 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, Nebraska Service Center, denied the application. The Director concluded that the date of birth on the Applicant's naturalization certificate conformed to the date as shown on his application for naturalization, and that a correction to the Applicant's Certificate of Naturalization was therefore not justified.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in not correcting his naturalization certificate. He asserts that his birth date is [REDACTED] and that the person who prepared his naturalization application mistakenly wrote his birth certificate registration date, [REDACTED] as his date of birth. The Applicant also refers to court cases that discuss a "substantial evidence test," and he asserts that he has submitted substantial evidence to support his application for a replacement naturalization certificate.

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

I. LAW

The Applicant is seeking replacement of his Certificate of Naturalization. The regulations pertaining to 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.

....

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- (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 Applicant is seeking replacement of his Certificate of Naturalization to reflect a correction of his birth date from [REDACTED] to [REDACTED]. The Director concluded that the date of birth on the Applicant's naturalization certificate conformed to the date as shown on his application for naturalization, and that a correction to the Applicant's Certificate of Naturalization was therefore not justified. On appeal, the Applicant submits copies of his birth certificate and Mexican passport reflecting a [REDACTED] birth date. After a review of the entire record, we find the Applicant is not eligible for a corrected Certificate of Naturalization, as his date of birth on the Certificate is the same as the one provided on his application, and he has not shown that the date of birth on his Certificate is due to USCIS clerical error.

The Applicant asserts that his correct date of birth is [REDACTED] and that a church volunteer who prepared his naturalization application mistakenly wrote that his birth certificate registration date, [REDACTED] was his birth date. The Applicant states that he did not notice the error when he signed his naturalization application or when he became a naturalized citizen. The Form N-400, however, contains only the Applicant's signature and does not reflect that another individual prepared the form. In addition, there is no remedy available for an individual who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his behalf. *See* 8 C.F.R. § 292.1.

The Applicant also refers to court cases that discuss a "substantial evidence test," and he indicates that the record contains substantial evidence to justify his application to correct the date of birth error on his naturalization certificate. The court cases that the Applicant refers to, however, pertain to the standard for court review of administrative agencies' findings of fact at the federal court level. The cases do not pertain to the standard of review to be applied by USCIS when adjudicating replacement of Certificate of Naturalization applications.

The regulation at 8 C.F.R. § 338.5(a) permits a correction to the 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. Here, the record reflects that the Applicant represented his date of birth as [REDACTED] on his Form N-400, Application to File Petition for Naturalization. The record reflects that the Applicant also verbally confirmed that he was born on [REDACTED] during his naturalization interview on June 13, 1989, as indicated by the interviewing officer's red check mark on the Form N-400. The Applicant's immigrant visa also states that his birth date is

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While the Applicant's visa packet included his birth certificate in Spanish, the birth certificate was not accompanied by a certified English translation.¹

The record now includes a Mexican birth certificate and passport, with certified English translations, reflecting that the Applicant's date of birth is [REDACTED]. Nevertheless, 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. 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. *See* 8 C.F.R. § 338.5(a).

Based on the above, we conclude that the Applicant's Certificate of Naturalization does not contain incorrect information which resulted from USCIS clerical errors.

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 his 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 A-F-M-*, ID# 16191 (AAO May 18, 2016)

¹ All of the Applicant's lawful permanent resident-related documents, including four Forms I-550, Application for Verification of Last Entry of an Alien, and a Form I-90, Application by Lawful Permanent Resident Alien for Alien Registration Receipt Card Form I-151, also state that the Applicant's birth date is [REDACTED].