



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

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

MATTER OF H-K-E-

DATE: SEPT. 30, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Applicant, a native of India and a naturalized citizen of the United States, seeks a replacement Naturalization document to reflect his correct former country of nationality. *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, Texas Service Center, denied the application. The Director concluded that U.S. Citizenship and Immigration Services (USCIS) has no authority to issue a replacement Certificate of Naturalization for a country of nationality other than the last country of citizenship as established at the time of naturalization.

The matter is now before us on appeal. On appeal, the Applicant contends that there was a clerical error on his Certificate of Naturalization, that prior to his arrival in the United States, he was a citizen of India, and that he was born prior to the partition of India and the establishment of Pakistan in 1947. The Applicant submits evidence that he was a citizen of India prior to his arrival in the United States.

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

I. LAW

The Applicant is seeking replacement of Certificate of Naturalization to reflect a correction to his country of former nationality. Current section 338 of the Act provides for the contents of the Certificate of Naturalization, and states, in pertinent part:

A person admitted to citizenship in conformity with the provisions of this title shall be entitled upon such admission to receive from the [Secretary of Homeland Security] a certificate of naturalization, which shall contain substantially the following information: Number of application for naturalization; number of certificate of naturalization; date of naturalization; name, signature, place of residence,

autographed photograph, and personal description of the naturalized person, including age, sex, marital status, and country of former nationality . . . .

Former section 338 of the Act, in effect in 1985, when the Applicant's Certificate of Citizenship was issued, stated, in pertinent part:

A person admitted to citizenship by a naturalization court in conformity with the provisions of this title shall be entitled upon such admission to receive from the clerk of such court a certificate of naturalization, which shall contain substantially the following information: Number of petition for naturalization; number of certificate of naturalization; date of naturalization; name, signature, place of residence, autographed photograph, and personal description of the naturalized person, including age, sex, marital status, *and country of former nationality*; title, venue, and location of the naturalization court . . . .

(emphasis added). 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.
- (b) *Court-issued certificates.* If the certificate was originally issued by a clerk of court under a prior statute and USCIS finds that a correction is justified and can be made without mutilating the certificate, USCIS will authorize the issuing court to make the necessary correction and to place a dated endorsement of the court on the reverse of the certificate explaining the correction. The authorization will be filed with the naturalization record of the court, the corrected certificate will be returned to the naturalized person, and the duplicate will be endorsed to show the date and nature of the correction and endorsement made, and then returned to USCIS. No fee will be charged the naturalized person for the correction.
- (c) *USCIS-issued certificates.* If the certificate was originally issued by USCIS (or its predecessor agency), and USCIS finds that a correction was justified, the correction shall be made to the certificate and a dated endorsement made on the reverse of the certificate.
- (d) *Administrative actions.* When a correction made pursuant to paragraphs (b) or (c) of this section would or does result in mutilation of a certificate, USCIS will issue a replacement Certificate of Naturalization and destroy the surrendered certificate.

## II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Applicant was born in [REDACTED] in [REDACTED] prior to the partition of India and the establishment of Pakistan in 1947. Documentation the Applicant submitted in support of his visa application includes a copy of a 1949 birth certificate for the Applicant issued in [REDACTED] in which the word "Pakistanis" is crossed out, and replaced with "Indians," and a copy of his 1972 Indian passport, which states that his national status is "citizen of India." On the Applicant's Optional Form 230, Application for Immigrant Visa and Alien Registration, the Applicant's nationality is listed as India, while his place of birth is listed as Pakistan.

The Applicant was admitted to the United States as a lawful permanent resident on March 8, 1980.

The Applicant filed Form N-400, Application to File Petition for Naturalization, in March 1985. The record reflects that the Form N-400 in use at that time, unlike the current version of the Form N-400, did not require the Applicant to provide his country of citizenship or nationality, but only his place of birth, to which he indicated Pakistan. The Applicant submitted Form G-325, Biographic Information, with the Form N-400, on which he represented his nationality as "Indian".

The Applicant's Certificate of Naturalization was issued in 1985 by the U.S. District Court of South Dakota, Southern Division.<sup>1</sup>

The Applicant filed Form N-565, Application for Replacement Naturalization/Citizenship Document, in May 2015, stating that prior to emigrating to the United States he was a resident and citizen of India, and that his Certificate of Naturalization incorrectly states "Pakistan" as his country of former nationality.

The Director issued a request for evidence (RFE) in September 2015, asking the Applicant to submit, among other items, his original naturalization certificate.

In March, 2016, the Director denied the application, stating that USCIS has no authority to issue a replacement Certificate of Naturalization for a county of nationality other than the last country of citizenship as established at the time of naturalization.

On appeal, the Applicant submits further evidence that his country of former nationality was India, including a copy of a Certificate of Registration for Overseas Citizen of India, issued in [REDACTED] Texas in 2007, a copy of his Persons of Indian Origin Card, issued by the Consulate General of India in [REDACTED] Texas, in 2005, and copies of his Indian passports issued in 1955, 1963, 1972, and 1983.

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<sup>1</sup> Prior to 1990, former section 310 of the Act provided exclusive jurisdiction to naturalize persons as U.S. citizens to the courts. In 1990, Congress changed the naturalization process by granting the sole authority to naturalize persons as U.S. citizens to the U.S. Attorney General. See Section 301(a) of the Act, as amended by § 401(a), Immigration Act of 1990 (IA90), Pub.L. No 101-649, 104 Stat. 4978 (Nov. 29, 1990).

We have reviewed all the evidence in the record of proceeding.

### III. ANALYSIS

The issue in this case is whether the Applicant's Certificate of Naturalization contains incorrect information regarding the Applicant's country of former nationality which resulted from clerical error, or whether the country of former nationality conforms to the facts on the naturalization application. Upon review of the entire record, we find that the former nationality of the Applicant is India, as established in the record and confirmed by the Applicant during his naturalization process. Therefore we will sustain the appeal.

As discussed above, the Applicant consistently indicated that he was a national of India during his visa application process in 1980, and also during his naturalization process. Although the Applicant's naturalization application and immigration record list Pakistan as the Applicant's country of *birth*, the Applicant's country of *nationality* is consistently listed as India in USCIS records. The inconsistency in the Certificate of Naturalization may have arisen because the Form N-400 in use at the time of the application for naturalization did not require the Applicant to provide his country of former nationality. Furthermore, the Applicant filed a Form G-325 with his application for naturalization on which he indicated that his nationality was Indian. Despite the evidence in the record that the Applicant was a national of India, and the submission of the Form G-325 during his naturalization process indicating his nationality as India, the Certificate of Naturalization issued to the Applicant states that he was a former national of Pakistan. In sum, although the Applicant's country of birth was listed as Pakistan, the Applicant's nationality was consistently set forth the record as Indian. As such, we find that the Applicant's nationality on the Certificate of Naturalization was the result of a clerical error, and consequently, that a correction is permitted under the regulations.

The regulation at 8 C.F.R. § 338.5(a) addresses the situation whenever a Certificate of Naturalization has been delivered in which a clerical error was made in preparing the certificate. The Applicant's Certificate of Naturalization was issued in 1985 by the U.S. District Court of South Dakota, Southern Division, under a previous statute, and therefore the regulations at 8 C.F.R. §§ 338.5(b) and (d) are applicable to this case.

The Applicant's request is justified and permitted under the regulations. The appeal will therefore be sustained.

### IV. CONCLUSION

Section 338 of the Act requires that the contents of the Certificate of Naturalization must show, under "country of former nationality," the name of the Applicant's last country of citizenship, as shown in the application and USCIS records. 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 record establishes that the Applicant's country of former nationality is India, and the Applicant provided a

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Form G-325 indicating his nationality of India during the naturalization process, the Applicant has established eligibility for issuance of a new Certificate of Naturalization.

**ORDER:** The appeal is sustained.

Cite as *Matter of H-K-E-*, ID# 10905 (AAO Sept. 30, 2016)