



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

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

In Re: 20267356

Date: APR. 21, 2022

Appeal of Nebraska Service Center Decision

Form N-565, Application to Replace a Certificate of Citizenship or Naturalization

The Applicant, a naturalized U.S. citizen, seeks a replacement Certificate of Naturalization with a different name and date of birth. *See* 8 C.F.R. § 338.5 (governing the correction of naturalization certificates).

The Director of the Nebraska Service Center partially denied¹ the Form N-565, Application for Replacement Naturalization/Citizenship Document (Form N-565), concluding that the [redacted] 1937 date of birth printed on the Applicant's original certificate was the same date of birth she provided at the time of naturalization, and she did not establish that U.S. Citizenship and Immigration Services (USCIS) made a clerical error in preparing the certificate.

Department of Homeland Security regulations provide that 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 applicant may apply for issuance of a corrected certificate, without fee, in accordance with the form instructions. 8 C.F.R. § 338.5(a). The correction will not be deemed justified, however, where the naturalized person later alleges that the date of birth which he or she stated to be his or her correct date of birth at the time of naturalization was not in fact his or her true date of birth. 8 C.F.R. § 338.5(e).

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 103.2(b)(1); *Matter of Chawathe*, 29 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal because the Applicant has not met this burden.

First, at filing the Form N-565 and on appeal, the Applicant's daughter requests a new Certificate of Naturalization reflecting the Applicant's name as it is listed on her Birth Certificate. In an affidavit submitted on appeal, the Applicant's daughter states that "USCIS has now transposed the [Applicant's] birth given last name, [which is] confusing since [USCIS has] an official legal document to show the correct first name, correct maiden name and correct last name." However, the record reflects that, at the time of her naturalization interview in June 1997, the Applicant requested that her name be legally changed

¹ The Director concluded that the Applicant's last name was misspelled on the original certificate and issued a new certificate changing only her last name to the correct spelling.

from M-E-L-D-A-² to E-L-V-. Upon filing the Form N-565, requesting a change of name and date of birth, the Director solely corrected the spelling of the Applicant's last name on her Certificate of Naturalization to reflect its proper spelling as provided for in her naturalization interview. Given that the Applicant requested this name change at the time of interview, she has not met the requirements of 8 C.F.R. § 338.5 and a new Certificate of Naturalization reflecting a different name cannot be issued.

Next, the Applicant's daughter does not contest that the [] 1937 date of birth on the Applicant's Certificate of Naturalization is the date of birth the Applicant represented and attested to in naturalization proceedings, and that USCIS did not make a clerical error. Rather, the Applicant's daughter states that "[the Applicant] vehemently apologizes for mistakes made, it was not intentional and definitely in no way advantageous." She further admits that "[the Applicant] sincerely had dates confused, had lapses in her memory from childhood and inadvertently swore under oath to incorrect information." The Applicant requests a new Certificate of Naturalization to eliminate the discrepancies so that she can apply for a U.S. passport to visit her son in the Dominican Republic.

The record reflects that the Applicant naturalized as a U.S. citizen in 2000 and was issued a Certificate of Naturalization reflecting that she was born in [] 1937. A review of the record shows that the Applicant represented on her Form N-400, Application for Naturalization (Form N-400), that she was born in [] 1937, consistent with the date of birth listed on her Lawful Permanent Resident (LPR) card. The Applicant confirmed during her naturalization interview that she was born in [] 1937, as indicated by the interviewing officer's check marks next to questions regarding the Applicant's identity including her date of birth on the form. Furthermore, the Applicant signed the Form N-400 at the conclusion of the interview affirming that all information therein, including her date of birth, was true and correct. Lastly, the record contains other immigration forms the Applicant filed prior to her naturalization, on which she similarly represented that she was born in [] 1937.

We acknowledge the Applicant's explanation that she unintentionally made a mistake by swearing under oath to incorrect information. However, in adjudication of the Applicant's request for a replacement certificate, we are bound by the regulation at 8 C.F.R. § 338.5(a), which permits a date of birth correction only when: (1) the date of birth printed on the original certificate does not conform to the information on the naturalization application, or (2) USCIS committed a clerical error in preparing the certificate. 8 C.F.R. § 338.5(e). Here, neither the Applicant nor her daughter is alleging that the date printed on the Applicant's naturalization certificate was different than the one the Applicant listed on her naturalization application or that USCIS printed the incorrect date of birth on her naturalization certificate. Because the Applicant has not demonstrated that either of these two situations occurred in her case, we cannot change the date of birth on her Certificate of Naturalization. Although we recognize the hardship to the Applicant that this result may cause, we lack the authority to waive the requirements of the regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry "the force and effect of law"). The Applicant's claim that the [] 1937 date of birth she attested to as true and correct in naturalization proceedings was in fact incorrect is not considered a justifiable basis for a date of birth change and issuance of a new certificate. Consequently, her Form N-565 will remain denied.

ORDER: The appeal is dismissed.

² Initials are used to protect the identities of the individuals.