



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

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

In Re: 24140135

Date: APR. 13, 2023

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 date of birth. *See* 8 C.F.R. § 338.5 (governing the correction of naturalization certificates).

The Director of the Nebraska Service Center (Director) denied the Form N-565, Application for Replacement Naturalization/Citizenship Document (Form N-565), concluding that a complete review of all U.S. Citizenship and Immigration Services (USCIS) and former Immigration and Naturalization Services (INS) records indicates that the date of birth listed on the original Certificate of Naturalization is the same date of birth provided by the Applicant at the time of naturalization and she did not establish that USCIS made a clerical error in preparing the certificate. The matter is now before us on appeal.

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). We review 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.

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 they stated to be their correct date of birth at the time of naturalization was not in fact their true date of birth. 8 C.F.R. § 338.5(e).

The record reflects that the Applicant naturalized as a U.S. citizen in March 1997 and was issued Certificate of Naturalization reflecting that she was born in El Salvador on [redacted] 1978. The Applicant does not contest that the [redacted] 1978 date of birth on her Certificate of Naturalization is the date she represented and attested to in naturalization proceedings as her true and correct date of birth, nor does she claim that USCIS made a clerical error in printing her certificate. The Applicant asserts that the birth certificate she provided at the time of naturalization had the incorrect birthdate, and she has now obtained a new birth certificate, issued in March 2021, reflecting her correct date of birth, which is [redacted] 1978.

On appeal, the Applicant contends that the incorrect date of birth was a clerical error made in El Salvador at the time her original birth certificate was issued. She indicates that all of her documentation, including her driver's license and marriage certificate, reflect her correct date of birth of [redacted] 1978. She explains that her mother was very young and unable to read or write at the time of her birth, which is why she did not realize the date of birth stated on the birth certificate issued at that time, [redacted] 1978, was incorrect. When her mother realized the error, she was unable to afford the fees associated with obtaining a new birth certificate reflecting the correct date of birth. She further explains that there was also a war going on during that time and her family had to leave for their safety. At the time of filing the Form N-565, the Applicant submitted her birth certificate, reflecting her date of birth as [redacted] 1978, issued in [redacted] El Salvador in March 2021.

We acknowledge the Applicant's explanation that she recently obtained an updated copy of her birth certificate reflecting the corrected date of birth. However, in the 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. Here, the Applicant is not alleging that the birthdate printed on her naturalization certificate was different than the one she listed on her naturalization application or that USCIS printed the incorrect date of birth on her naturalization certificate.¹ 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. The Applicant's claim that the [redacted] 1978 date of birth she attested to as true and correct in naturalization proceedings was in fact incorrect is not a justifiable basis for a date of birth change and issuance of a new certificate. See 8 C.F.R. § 338.5(e) (stating that a correction of an applicant's date of birth on a naturalization certificate will not be deemed justified where the applicant later alleges that the date of birth asserted as true at the time of naturalization is in fact not their actual birthdate at the time). Although we acknowledge the claims of hardship the Applicant asserts on appeal, 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"). Consequently, her Form N-565 will remain denied.

ORDER: The appeal is dismissed.

¹ We also note that the Applicant indicated on the Form N-565 that her date of birth has legally changed due to a court order that was not provided with her application or on appeal. However, as the Director correctly noted, the Form N-565 specifically states that only applicants applying for a replacement Certificate of Citizenship may select this option. Here, the Applicant is seeking a correction of her Certificate of Naturalization, but, as stated, 8 C.F.R. § 338.5 permits the issuance of a corrected naturalization certificate in only certain limited circumstances not applicable here.