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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date: OCT 22 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for a Replacement Citizenship Document (Form N-565)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of Mexico who acquired U.S. citizenship at birth through his parent. The applicant claims that the date of birth listed on his certificate of citizenship is incorrect and he seeks to have the certificate corrected.

The service center director denied the application based on his determination that the date of birth listed on the applicant's certificate of citizenship was the same as the date listed in his immigration records.

On appeal, the applicant maintains that the date of birth listed on his certificate of citizenship is incorrect. The applicant states that his true date of birth is June 13, 1954, and not July 3, 1954 as indicated on his certificate. *See* Form N-565, Application for Replacement Citizenship Document.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record reveals that a clerical error was made in the issuance of the applicant's certificate and the appeal will be sustained.

Section 343 of the Act, 8 U.S.C. § 1454, and the corresponding regulations at 8 C.F.R. § 343a provide no authority to change the date of birth on a certificate of citizenship. The statute and regulations allow for issuance of a replacement certificate if the original document has been lost, mutilated or destroyed; or if a citizen's name has changed after naturalization due to marriage or a court order. *See* Section 343(a), (c) of the Act; 8 C.F.R. § 343a.1. The statute and regulations governing certificates of citizenship do not address the possibility of errors made in the preparation of the certificate and the need for correction of such mistakes. Section 338 of the Act, 8 U.S.C. § 1449, and the regulations promulgated thereunder, at 8 C.F.R. § 338.5, permit the correction of a certificate of naturalization in certain limited circumstances. Where warranted, these regulations may be extended to certificates of citizenship.

The regulation at 8 C.F.R. § 338.5 provides, in pertinent part:

- (a) 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, Form N-565, without fee, may be filed by the naturalized person.
- ...
- (e) 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.

In this case, the record indicates that a clerical error was made in the preparation of the applicant's certificate of citizenship because the date of birth stated on his certificate of citizenship does not conform to the date of birth stated on his birth certificates. Rather, the date of birth listed on his certificate of citizenship is the date his birth was registered in Tamaulipas, Mexico. The birth certificate that the applicant originally submitted with his Form N-600, Application for Certificate of Citizenship, was issued on July 3, 1954 and clearly states that the applicant's birth was registered on that date, but that he was born on June 13, 1954. With his Form N-565, the applicant submitted a second birth certificate issued in 2004, which again verifies that he was born on June 13, 1954 and that his birth was registered on July 3, 1954. June 13, 1954 is also the applicant's date of birth stated on his California driver's license.

On appeal, the applicant has established that the date of birth on his certificate of citizenship is erroneous. The primary evidence of his birth in the record consistently states that he was born on June 13, 1954. The record contains no identity document listing July 3, 1954 as the applicant's date of birth. Accordingly, the appeal will be sustained and the matter will be returned to the service center for issuance of a replacement certificate stating the applicant's correct date of birth, June 13, 1954.

ORDER: The appeal is sustained. The matter is returned to the Nebraska Service Center for issuance of a replacement certificate of citizenship stating the applicant's correct date of birth.