



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

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

In Re: 29022292

Date: NOV. 8, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant seeks a replacement Certificate of Naturalization with a different date of birth pursuant to Title 8, Code of Federal Regulations, section 338.5 (8 C.F.R. § 338.5).

The Director of the Nebraska Service Center denied the application, concluding that the 1959 date of birth printed on the Applicant's original certificate was the same date of birth he provided at the time of naturalization, and he did not establish that a clerical error was made in preparing the certificate or that the 1959 date of birth did not conform to the facts on his application for naturalization.

On appeal, the Applicant resubmits a copy of his Mexican birth certificate issued in 2022. He asserts that he was born in 1958 and that the 1959 date of birth on his Naturalization Certificate is therefore incorrect.

The Applicant bears the burden of proof to demonstrate eligibility for the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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 2002 and was issued a Certificate of Naturalization, which reflects that he was born in Mexico in 1959. He filed the instant Form N-565 indicating that this date of birth was incorrect due to a typographical or clerical error. In denying the Form N-565, the Director explained that the Applicant was not eligible for a replacement certificate with a different date of birth because on his Form N-400, Application for Naturalization, he

represented that he was born in 1959, and the record of proceedings at the time included his Mexican birth certificate with the same date of birth.

The Applicant does not contest that the 1959 date of birth printed on his original certificate is the date he represented and attested to in naturalization proceedings as his true and correct date of birth.

We acknowledge the Applicant's statement that this date is wrong, as well as the submission of the new Mexican birth certificate indicating that he was born in 1958. However, in adjudicating the Applicant's request for a replacement Certificate of Naturalization 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) U.S. Citizenship and Immigration Services made a clerical error in preparing the certificate. As the Applicant does not claim and the record does not show that either of these two situations occurred in this case, we cannot authorize a change to the date of birth on his Certificate of Naturalization. The Applicant's statement that the 1959 date of birth he attested to as true and correct in naturalization proceedings is incorrect is not considered a justifiable basis for a date of birth change and issuance of a replacement certificate. 8 C.F.R. § 338.5(e).

ORDER: The appeal is dismissed.