



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

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

In Re: 25133914

Date: APR. 19, 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 Citizenship indicating that she derived citizenship as of her 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 the Applicant had not established that U.S. Citizenship and Immigration Services (USCIS) made a clerical error when it listed the date she swore the oath of allegiance to the United States as the date she derived citizenship on her original certificate. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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).

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.

The record reflects that the Applicant was born in Mexico in [] 1949. The Applicant's mother was born in the United States in [] 1923 and married the Applicant's father, a foreign national, in Mexico in [] 1939. The Applicant entered the United States in November 2009 as a nonimmigrant and took the oath of allegiance to the United States in August 2010.

The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001).

The citizenship statute in effect when the Applicant was born was section 201(g) of the Nationality Act of 1940 (1940 Act).¹ Pursuant to that section, an individual who was born abroad between January 13, 1941, and December 24, 1952, to married parents, one of whom was a U.S. citizen, would acquire U.S. citizenship at birth if the U.S. citizen parent resided in the United States for 10 years (5 of which were after the age of 16) before the individual's birth. Here, the Applicant has demonstrated that she was born to married parents in [redacted] 1949 and that her mother was a U.S. citizen who met the physical residence requirements prior to the Applicant's birth.

However, section 201(g) of the 1940 Act further provided that in order for an individual to retain such citizenship, the individual had to reside in the United States or its outlying possessions for a period or periods totaling 5 years between the ages of 13 and 21 years. Individuals who acquired U.S. citizenship at birth but who lost their citizenship because they did not fulfill the retention requirements may have their citizenship restored "from and after taking the oath of allegiance." Section 324(d)(1) of the Act, 8 U.S.C. § 1435(d)(1); *see also* 22 C.F.R. § 50.30(d) (providing that a former U.S. citizen who did not retain citizenship by failure to fulfill residency requirements as set out in section 201(g) of the 1940 Act may regain citizenship under section 324(d) of the Act).

In this case, the Applicant did not meet the retention requirements provided in section 201(g) of the 1940 Act as she entered the United States for the first time in November 2009, when she was 60 years old, and does not claim that she resided in the United States at any time prior to that entry. The Applicant then took the oath of allegiance to the United States in August 2010, thus restoring her U.S. citizenship pursuant to section 324(d)(1) of the Act. Accordingly, the Applicant derived citizenship as of the date she swore the oath of allegiance, as indicated on her original Certificate of Citizenship.

On appeal, the Applicant asserts that she has complied with all the requirements necessary to be awarded U.S. citizenship from birth rather than from 2010 when she took her oath and her citizenship was restored, but she does not submit any evidence or relevant legal authority in support of this assertion.

The burden of proof in these proceedings rests with the Applicant, and a replacement Certificate of Citizenship may be issued only if the Applicant can show that the correction is justified due to USCIS error. As the Applicant has not shown that the information on the Certificate of Citizenship was printed incorrectly as a result of USCIS error, the Applicant has not established eligibility for issuance of a new certificate. Consequently, the Form N-565 will remain denied.

ORDER: The appeal is dismissed.

¹ Section 201(g) of the 1940 Act, Pub. L. No. 76-853, 54 Stat. 1137 (Oct. 14, 1940), was repealed on that date by the Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163, eff. Dec. 24, 1952 (June 27, 1952).