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

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

MATTER OF E-S-

DATE: JUNE 6, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

APPLICATION: FORM N-565, APPLICATION FOR REPLACEMENT
NATURALIZATION/CITIZENSHIP DOCUMENT

The Applicant, a native of Ghana and a naturalized U.S. citizen, seeks a replacement Certificate of Naturalization to reflect a corrected date of birth. *See* 8 C.F.R. § 338.5. A U.S. citizen may request a new Certificate if the citizen can show that his or her Certificate of Naturalization was issued with incorrect information because of a clerical error by U.S. Citizenship and Immigration Services (USCIS).

The Director, Texas Service Center, denied the application. The Director concluded that the date of birth on the Applicant's naturalization certificate conformed to the date as shown on his application for naturalization, and that a correction to the Applicant's Certificate of Naturalization was therefore not justified.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in not issuing a replacement naturalization certificate. The Applicant asserts that although he believed his birth date was [REDACTED] when he became a naturalized U.S. citizen, new evidence demonstrates that his actual birth date is [REDACTED]. The Applicant cites to a district court decision, and claims that USCIS policy allows him to obtain a replacement Certificate of Naturalization reflecting a change in his date of birth. In addition, the Applicant asserts that a correction to his naturalization certificate is justified as an equitable remedy.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking replacement of his Certificate of Naturalization. The regulations pertaining to the correction of Certificates of Naturalization in 8 C.F.R. § 338.5, provide, in part:

- (a) *Application.* 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 may be filed, without fee, in accordance with the form instructions.

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- (e) *Data change.* 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.

II. ANALYSIS

The Applicant is seeking replacement of his Certificate of Naturalization to reflect a correction in his date of birth from [REDACTED], to [REDACTED]. The Director concluded that the date of birth on the Applicant's naturalization certificate conformed to the date as shown on his application for naturalization, and that a correction to his Certificate of Naturalization was therefore not justified. The Applicant asserts that although he believed his birth date was [REDACTED] when he became a naturalized U.S. citizen, he subsequently learned that his date of birth is [REDACTED]. The Applicant submits Ghanaian court documentation, a baptism certificate, and new birth certificate evidence reflecting that his date of birth is [REDACTED]. He also cites to a district court decision, and claims that USCIS policy allows him to obtain a replacement Certificate of Naturalization reflecting a change in his date of birth. In addition, the Applicant asserts that a correction to his naturalization certificate is justified as an equitable remedy. The entire record has been reviewed and considered in making a decision on the appeal. We find that the Applicant has not demonstrated his eligibility for a replacement Certificate of Naturalization.

A. Replacement Certificate under 8 C.F.R. § 338.5

The regulation at 8 C.F.R. § 338.5(a) permits a change to a date of birth on a Certificate of Naturalization when it is established that there was a clerical error attributable to USCIS in the preparation of the certificate. Here, the record reflects that the Applicant represented his date of birth as [REDACTED] on his Form N-400, Application to File Petition for Naturalization. The Applicant also verbally confirmed that he was born on [REDACTED] during his naturalization interview on May 30, 2002, as indicated by the interviewing officer's red check mark on the Form N-400.

Although the Applicant now submits Ghanaian court certification evidence, baptism documentation, and new birth certificate evidence reflecting that his date of birth is [REDACTED] the regulation at 8 C.F.R. § 338.5(e) does not allow for a correction to be made to a Certificate of Naturalization where the naturalized person later alleges that the date of birth which he or she confirmed to be the correct date of birth at the time of naturalization was not in fact the person's date of birth. Neither the statute nor the regulations allow USCIS to correct a date of birth on a Certificate of Naturalization for any reason other than clerical error attributable to USCIS. *See* 8 C.F.R. § 338.5(a). The Applicant has not demonstrated that his Certificate of Naturalization contains date

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of birth errors attributable to USCIS. Accordingly, he is not eligible for a replacement Certificate under 8 C.F.R. § 338.5.

B. Replacement Certificate pursuant to a U.S. district court decision

The Applicant refers to the U.S. District Court, District of Minnesota case, *Hussain v. USCIS*, 541 F. Supp. 2d 1082 (D. Minn. 2008), and claims that, despite the lack of a USCIS clerical error on his naturalization certificate, USCIS may nevertheless issue a replacement Certificate of Naturalization to reflect a change in his date of birth. The Applicant asserts that the district court in *Hussain* ordered a birth date amendment to a naturalization certificate; that his case is similar to the *Hussain* case, in that evidence in the record establishes that his actual birth date is [REDACTED] not [REDACTED] and that he is seeking an amendment to his naturalization certificate in good faith.

We are not bound by a published decision of a U.S. district court. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Furthermore, the court in *Hussain* ordered a date of birth amendment to a naturalization certificate pursuant to 8 C.F.R. § 334.16(b), a regulation that pertained specifically to district court jurisdiction over petitions to amend errors in naturalization documents, and that was repealed in November 2011. The court in *Hussain* did not find that USCIS could correct the date of birth on a Certificate of Naturalization where the naturalized person later alleged that the birth date which he or she confirmed to be the correct date of birth at the time of naturalization was not in fact the person's date of birth. Rather, the court agreed that the regulation at 8 C.F.R. § 338.5 did not permit USCIS to administratively amend the birth date on a naturalization certificate in the absence of a clerical error. *See Hussain*, 541 F. Supp. 2d at 1085. Based on our discussion above, the Applicant has not demonstrated that he is eligible for a replacement Certificate of Naturalization pursuant to a district court decision.

C. Replacement Certificate as an equitable remedy

The Applicant asserts that a correction to his Certificate of Naturalization is also justified as an equitable remedy, because evidence demonstrates his birth date is [REDACTED] and because he relied on a USCIS officer's statement that he could change the birth date on his Certificate if he obtained a court-related order from his country. The record, however, lacks evidence demonstrating that a USCIS officer misinformed the Applicant about the requirements for changing the birth date on his Certificate of Naturalization. Furthermore, USCIS may not issue a replacement naturalization certificate as an equitable remedy.

Our jurisdiction is limited to that authority specifically granted to us by the Secretary of the United States Department of Homeland Security. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004), and 8 C.F.R. § 103.1(f)(3)(E)(m) (as in effect on February 28, 2003.) We have no jurisdiction over equitable relief claims arising under the Act. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991) (estoppel is an equitable form of relief that is available only through the courts; an administrative tribunal is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of the Service from undertaking a

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lawful course of action that it is empowered to pursue by statute or regulation.) The Applicant is therefore not eligible for a replacement Certificate of Naturalization as an equitable remedy.

III. CONCLUSION

The burden of proof in these proceedings rests with the Applicant and a replacement Certificate of Naturalization may be issued only if it “does not conform to the facts shown on the application for naturalization, or a clerical error was made in preparing the certificate” *See* 8 C.F.R. 338.5(a), *supra*. As the Applicant has not provided documentation to show that his date of birth on the Certificate of Naturalization was printed incorrectly as a result of an error by the USCIS, the Applicant has not established eligibility for issuance of a new Certificate of Naturalization. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of E-S-*, ID# 16418 (AAO June 6, 2016)