

2014 WL 5490452 (INS)

U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services

INS Policy and Procedural Memoranda
POLICY MEMORANDUM

SUBJECT: DNA Evidence of Sibling Relationships for Service Centers, Domestic and International Field Offices

PM-602-0106
October 17, 2014

Purpose

*1 This policy memorandum (PM) articulates USCIS policy on acceptance of DNA evidence in support of sibling relationships. This PM revises Adjudicator's Field Manual (AFM) Chapter 21.9(c); AFM Update AD14-02.

Scope

This PM applies to and is binding on all USCIS officers in service centers and domestic and international field offices.

Authorities

- Sections 101(b)(1), 101(b)(2) and 203(a)(4) of the Immigration and Nationality Act (the Act)
- 8 U.S.C. §§ 1101(b)(1), 1101(b)(2) and 1153(a)(4)
- 8 CFR 204.2(d) and (g)

Background

USCIS adjudicates petitions filed on behalf of siblings of U.S. citizens pursuant to section 203(a)(4) of the Act. A sibling relationship requires that the petitioner and beneficiary are, or once were, the child of a common parent as those terms are defined by sections 101(b)(1) and (2) of the Act. 8 CFR 204.2(g) discusses primary evidence to establish a sibling relationship. For circumstances in which primary evidence is unavailable or unreliable, an officer may consider secondary evidence that demonstrates both the petitioner's and beneficiary's parent-child relationship to the common parent.

8 CFR 204.2(d)(2)(v) provides a non-exhaustive list of secondary evidence that may be submitted to establish a parent-child relationship: medical records, school records, religious documents, and affidavits. 8 CFR 204.2(d)(2)(vi) provides authority to require a Blood Group Antigen Test to establish a biological parent-child relationship when other forms of evidence have proven inconclusive. Due to technological advances, however, the Blood Group Antigen Test is no longer routinely performed and many petitioners opt to submit DNA evidence instead. Unlike the Blood Group Antigen Test, USCIS currently has no legal authority to require DNA testing to establish biological parent-child relationships. Therefore, officers shall not require DNA testing; they may only suggest DNA testing as an optional form of secondary evidence in support of petitions seeking to establish biological parent-child relationships.

USCIS has a long-standing policy of accepting parent-child DNA test results to establish parentage. Specifically, a 2008 USCIS policy memorandum provides that, "in situations where credible evidence is insufficient to prove the claimed biological relationship, officers may suggest and consider DNA testing results."¹ In such cases, a 99.5% statistical probability

is required to establish parentage.²

On occasion, USCIS receives DNA “sibling-to-sibling” test results from a petitioner seeking to classify a beneficiary as his or her sibling under section 203(a)(4) of the INA. Whether USCIS may rely upon DNA “sibling-to-sibling” test results is predicated upon the existence of industry probability standards that provide a level of certitude at least equivalent with DNA parentage testing.

*2 Through consultations with DHS’s Science and Technology (S&T) component, the National Institute of Science and Technology (NIST), AABB (formerly the American Association of Blood Banks, but now known solely by its acronym), USCIS learned that there is no universally accepted standard for relationship probability in sibling-to-sibling DNA testing.³

Policy

Because the DNA testing industry has not established probability standards for sibling-to-sibling DNA test results, USCIS cannot determine if sibling-to-sibling test results are sufficiently reliable. USCIS, therefore, may not afford any evidentiary weight to sibling-to-sibling DNA test results, and an officer may not suggest or consider sibling-to-sibling DNA testing for petitions filed pursuant to section 203(a)(4). USCIS will, however, continue to rely on DNA testing results between parents and children. Parent-child DNA test results between one or both claimed siblings and the claimed common parent will be considered according to current policy relating to DNA testing for parent-child relationships.⁴

Implementation

☞ 1. Chapter 21.9(c) of the AFM is revised as follows:

(1) Evidence.

(A) The documentation required to establish a sibling relationship varies and depends entirely on the common parent(s) through whom the relationship occurs. Therefore, the supporting documents should be carefully reviewed to ensure that both the petitioner and beneficiary had a parent-child relationship with the claimed common parent, as defined at 101(b)(1) and (2) of the Act. The following sections of the regulations discuss the primary or secondary evidence necessary to support a petition for a sibling, depending on the nature of the sibling relationship:

- **8 CFR 204.2(g)(2)(i)** - primary evidence if the siblings share a common mother or are the legitimate children of a common father;
- **8 CFR 204.2(g)(2)(ii)** - primary evidence if either or both siblings are legitimated;
- **8 CFR 204.2(g)(2)(iii)** - primary evidence if either sibling is illegitimate;
- **8 CFR 204.2(g)(2)(iv)** - primary evidence for stepsiblings; and
- **8 CFR 204.2(d)(2)(v) and (vi)** - secondary evidence of parent-child relationships.

(B) DNA Evidence. Officers will not suggest sibling-to-sibling DNA testing for petitions filed pursuant to section 203(a)(4). If a petitioner submits sibling-to-sibling DNA test results, USCIS may not afford any evidentiary weight to such results, as they are not considered sufficiently reliable to warrant consideration. However, officers may consider parent-child DNA test results submitted to establish the relationship of the claimed siblings and the claimed *common parent*, in accordance with guidance relating to DNA testing in parent-child relationships [See Aytes, Michael, Policy Memorandum, *Genetic Relationship Testing; Suggesting DNA Tests, Revisions to the Officers Field Manual (AFM) Chapter 21 (AFM Update AD07-25)*, March 19, 2008].

*3 2. The AFM **Transmittal Memoranda** button is revised by adding a new entry, in numerical order, to read:

AD14-02 10/17/2014

Chapter 21.9(c)

Articulates USCIS policy on acceptance of DNA evidence in support of sibling relationships.

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of the Chief Counsel.

Footnotes

- ¹ See Aytes, Michael, PM, *Genetic Relationship Testing: Suggesting DNA Tests, Revisions to the Officers Field Manual (AFM) Chapter 21 (AFM Update AD07-25)*, March 19, 2008. (http://www.uscis.gov/files/pressrelease/genetic_testing.pdf).
- ² See Cronin, Michael, *Immigration and Naturalization Service PM, Guidance on Parentage Testing for Family-Based Immigrant Visa Petitions*, July 14, 2000. (http://connect.uscis.dhs.gov/workingresources/immigrationpolicy/Documents/Attach_OEFmemPlus_71400.pdf)
- ³ These scientific and professional authorities note that because half of a child's DNA must come from each parent, it is straight forward to compare parent-child DNA, develop a statistical parentage probability, and set a threshold that will not exclude valid claims. Siblings, however, receive a different combination of DNA from each parent; therefore, setting a fixed threshold that will not exclude valid sibling relationships is a topic of ongoing research.
- ⁴ The relationship between each sibling and the claimed common parent must be individually established. When one sibling's relationship to the common parent is established through primary and/or secondary evidence already contained in the record, the petitioner may only need to submit additional evidence of the claimed relationship between the other sibling and the common parent. See Aytes, Michael, PM, *Genetic Relationship Testing: Suggesting DNA Tests, Revisions to the Officers Field Manual (AFM) Chapter 21 (AFM Update AD07-25)*, March 19, 2008. (http://www.uscis.gov/files/pressrelease/genetic_testing.pdf) for additional information on the use of DNA testing to establish a parent-child relationship.

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