

INTERIM MEMO FOR COMMENT

Posted: 09-20-2010

Comment period ends: 10-04-2010

This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



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

August 26, 2010

PM-602-0007

Policy Memorandum

SUBJECT: Validity of Puerto Rico Birth Certificates as Evidence (AFM Update AD10-43)

Purpose

This Policy Memorandum (PM) provides guidance to U.S. Citizenship and Immigration Services (USCIS) field offices and service centers regarding processing of petitions and applications dependent upon a Puerto Rico birth certificate to establish status, familial relationship, or other eligibility factor, in light of recent Puerto Rico legislation affecting the validity of these birth certificates.

Scope

Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees.

Authority

Section 103(a) of the Immigration and Nationality Act, 8 U.S.C. § 1103(a); section 451 of the Homeland Security Act of 2002, 6 U.S.C. § 271, and 8 CFR 103.2.

Background

On December 22, 2009, the Governor of Puerto Rico signed into law S.B. No. 1182, Law No. 191 of 2009. The legislation amended Puerto Rico law with respect to the issuance and validity of birth certificates. Section 6 provided, in general, that all certified copies of birth certificates issued before July 1, 2010 would become invalid either within 15 days of issuance or on July 1, 2010, whichever date was later. Under the new 2010 law, Puerto Rico will begin issuing more secure birth certificates on July 1, 2010. Subsequently, on June 25, 2010, the Governor signed into law S.B. 1653, Law No. 68 of 2009. This amendment eliminated the 15-days-beyond-issuance clause and provided that a birth certificate issued before July 1, 2010 will remain valid until September 30, 2010.

USCIS officers should note that the new Puerto Rico law does not alter the substantive eligibility requirements for immigration petitions and applications. USCIS procedures applicable to the request for and storage of original documents are unchanged, as are laws and regulations applicable to personally identifiable information (PII). (See AFM Chapter 11.1 for information on requesting and storing certified and original documents.)

When a vital statistics record is required, however, it must be in the form of a valid record certified as authentic by the governmental entity that has custody of the record. 8 CFR 287.6(a).

Thus, USCIS is taking note of section 6 of Law No. 191 of 2009, as amended by Law No. 68 of 2010, which provides, in relevant part:

All certified copies of birth certificates issued before July 1, 2010, shall be null and have no effect whatsoever for any purpose for which the same were requested, after September 30, 2010. This provision shall not be interpreted to void any procedures initiated prior to the expiration date provided for in this Section, for which certified copies of birth certificates issued before July 1, 2010, are being validly used.¹

Note that section 6 also gives the Governor of Puerto Rico authority, by executive order, to extend by an additional 30 days the validity of a birth certificate issued before July 1, 2010. If the Governor exercises this authority, USCIS will advise USCIS officers accordingly.

Policy

USCIS officers will request a new Puerto Rico birth certificate only as specified in Chapter 11.1(n) of the Adjudicator's Field Manual (*AFM*) as amended by this PM.

Implementation

1. Chapter 11.1 of the *AFM* is amended by adding new section (n) to read as follows:

(n) Birth Certificates from Puerto Rico. As of September 30, 2010, all birth certificates issued in Puerto Rico before July 1, 2010 are invalid, pursuant to the laws of that Commonwealth. How adjudicators treat a Puerto Rico birth certificate submitted in support of an application or petition depends on both the issuance date of the birth certificate and the submission date of the application or petition.

(1) Petitions and Applications Received on or before September 30, 2010. In any case involving a petition or application filed on or before September 30, 2010, officers will accept as valid a Puerto Rico birth certificate that was validly issued before or after July 1, 2010, even if the case is adjudicated after September 30, 2010. In instances where there is suspicion of fraud, follow standard procedures for requesting additional documents, referring to FDNS, or other applicable action. That the birth certificate was issued before July 1, 2010 or submitted near the invalidation date, does not by itself create any presumption of fraud or warrant additional scrutiny.

(2) Petitions and Applications Received After September 30, 2010.

(A) In any case received after September 30, 2010, officers will accept as valid a Puerto Rico birth certificate that was validly issued before July 1, 2010 only if the submission is postmarked or bears evidence that it was shipped to USCIS via a carrier other than the U.S. Postal Service no later than September 30, 2010. For example, a birth certificate issued on June 30, 2010 will be accepted if the

¹ The English text is taken from the website of Puerto Rico's Federal Affairs Administration.

certificate's submission is postmarked no later than September 30, 2010. In instances where there is suspicion of fraud, follow standard procedures for requesting additional documents, referring to FDNS, or other applicable action. That the birth certificate was issued immediately prior to July 1, 2010 does not by itself create any presumption of fraud or warrant additional scrutiny.

(B) For cases received after September 30, 2010 and postmarked or shipped via a carrier other than the U.S. Postal Service after September 30, 2010, officers should verify that the submitted Puerto Rico birth certificate (whether original or a copy) was issued on or after July 1, 2010.

- (i) If the birth certificate was issued on or after July 1, 2010, proceed with the adjudication pursuant to all applicable laws, regulations, and SOPs.
- (ii) If the birth certificate was issued before July 1, 2010, and the submission was postmarked or shipped via a carrier other than the U.S. Postal Service after September 30, 2010, the officer should prepare an RFE. The RFE must specifically state that the petitioner or applicant must submit a new birth certificate issued by the General Vital Statistics Office of Puerto Rico (Puerto Rico Department of Health) on or after July 1, 2010.

If ...	And ...	And ...	Then ...
Petition / Application is postmarked <u>on or before</u> September 30, 2010	The birth certificate was issued before July 1, 2010	There is no indication that the document is fraudulent	Accept as valid Puerto Rico birth certificate issued before July 1, 2010, even if the case is adjudicated after September 30, 2010, and proceed to adjudicate pursuant to all applicable laws, regulations, and SOPs
	The birth certificate was issued on or after July 1, 2010	There is no indication that the document is fraudulent	Verify the submitted Puerto Rico birth certificate was issued on or after July 1, 2010 and proceed to adjudicate pursuant to all applicable laws, regulations, and SOPs
Petition / Application is postmarked <u>after</u> September 30, 2010	The birth certificate was issued before July 1, 2010	There is no indication that the document is fraudulent	Verify the submitted Puerto Rico birth certificate was issued before July 1, 2010 and prepare an RFE that specifically states the petitioner or applicant must submit a new birth certificate issued by the General Vital Statistics Office of Puerto Rico (Puerto Rico Department of Health) on or after July 1, 2010
	The birth certificate was issued on or after July 1, 2010	There is no indication that the document is fraudulent	Verify the submitted Puerto Rico birth certificate was issued on or after July 1, 2010 and proceed to adjudicate pursuant to all applicable laws, regulations, and SOPs

Note: This memorandum addresses the validity of Puerto Rico birth certificates only as it relates to the date of issuance. This memorandum neither makes substantive

changes to any adjudicative procedures relating to the credibility of documents, nor calls into question the correctness of past decisions involving Puerto Rico birth certificates.

(3) Acceptance of Puerto Rico Birth Certificates at an Application Support Center. For purposes of establishing identity at an Application Support Centers (ASC), ASC personnel should determine whether to accept a Puerto Rico birth certificate based upon its validity at the time of presentation.

- From July 1, 2010 through September 30, 2010, an ASC may accept a Puerto Rico birth certificate issued before, on, or after July 1, 2010.
- After September 30, 2010, an ASC may accept a Puerto Rico birth certificate only if it was issued on or after July 1, 2010.

Acceptability of Puerto Rico birth certificates as identification documents at ASCs must be determined based only on validity at the time of presentation (and not based on when the petition or application requiring appearance was received).

Note: As a result of the legislative amendment that extended the validity date of Puerto Rico birth certificates issued prior to July 1, 2010 through September 30, 2010, as well as Puerto Rico's efforts to increase staff to process a high volume of requests, USCIS does not anticipate that most citizens will have difficulty obtaining new birth certificates in a timely fashion. If Puerto Rico is unable to timely meet demand for new certificates as September 30, 2010 approaches, additional guidance will be issued.

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

AD 10-43 (08/26/10)	Chapter 11.1	Provides guidance on adjudication of applications and petitions supported by Puerto Rico birth certificates.
---------------------	---------------------	--

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 Headquarters Field Operations or Headquarters Service Center Operations.