

7 FAM 1100 APPENDIX A DEOXYRIBONUCLEIC ACID (DNA) TESTING AND CITIZENSHIP

*(Office of Origin: CA/OCS/PRI)
(CT:CON-263; 08-27-2008)*

7 FAM 1110 APPENDIX A INTRODUCTION

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- a. This Appendix provides guidance to passport agencies and centers and U.S. embassies and consulates abroad about citizenship adjudication and the use of DNA testing to establish filiation between the U.S. citizen putative parent and a child claiming derivative U.S. citizenship.

NOTE ABOUT TERMS:

For the purposes of acquisition of U.S. citizenship, **filiation** is the blood relationship or kinship which exists between a child and the child's biological parents.

A **putative** parent is an alleged parent.

Issue of a marriage or child of the marriage or similar words indicate that the husband is the father of the child.

- b. 7 FAM 1130 provides guidance regarding adjudication of a citizenship claim for a child born abroad attempting to establish a derivative claim to U.S. citizenship through a U.S. citizen parent.
- c. The Bureau of Consular Affairs (CA) has interpreted the language in Section 1993 RS, Section 201(g) NA and Section 301(g) INA to mean that a biological and legal relationship exists between the U.S. citizen parent and the child.
- d. Determining filiations' between a U.S. citizen putative parent and a claim attempting to establish a derivative claim to U.S. citizenship can usually be accomplished by review of documentary evidence provided by the claimant.
- e. When traditional adjudication methods to satisfactorily establish filiations (the blood relationship between the child and the U.S. citizen putative parent) fail, the claimant may resort to submission of DNA evidence. Such evidence must be obtained and submitted in the manner prescribed by the Bureau of Consular Affairs (CA).

- f. Genetic testing is a useful tool for verifying an alleged biological relationship when no other form of credible evidence is available. Genetic testing is most commonly used to verify a parent/child relationship in conjunction with a citizenship case or an immigrant visa application (9 FAM 42.41). **However, due to the expense, complexity and logistical delays inherent in parentage testing, genetic testing should be used only if other credible proof does not establish to the satisfaction of the adjudicating officer that the relationship exists.** When genetic testing appears warranted, the consular officer should advise the applicant that genetic testing may establish the validity of the relationship; that such testing is entirely voluntary; and that all costs of testing and related expenses must be borne by the applicant and paid to the laboratory in advance. In addition, the consular officer should caution the applicant that submitting to testing does not at all guarantee the subsequent issuance of a U.S. passport, and that the results of DNA testing may rather preclude issuance.
- g. **Who should be tested:** If at all possible, the child, mother and father should all be tested. In the event of the death of one or both parents, the AABB accredited testing facility will provide guidance regarding testing of other relatives.

NOTE: Why test the mother? DNA Relationship/Parentage testing favors testing the child and both the mother and father to ensure that the child is actually the "issue" of the two putative parents -- that is, to rule out cousins, unrelated children, etc. The Bureau of Consular Affairs (CA) follows this practice even if the citizenship claim is through the U.S. citizen father.

7 FAM 1120 APPENDIX A AUTHORITIES

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- a. INA Section 301 (8 U.S.C. 1101);
- b. INA Section 309 (8 U.S.C. 1109);
- c. 22 CFR 50.2 Determination of U.S. nationality of persons abroad;
- d. 22 CFR 51.40 - burden of proof is upon the applicant to establish a claim to U.S. citizenship;
- e. 22 CFR 51.41 Every application shall be accompanied by evidence of the U.S. nationality of the applicant;
- f. 22 CFR 51.54 Requirement of additional evidence of U.S. citizenship;
- g, 22 CFR 51.28 Any adjudicating official may require additional evidence of identity;

- h. Section 201(g) of the Nationality Act of 1940 (NA); and
- i. Section 1993 of the Revised Statutes (RS).

7 FAM 1130 APPENDIX A GETTING STARTED

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- a. Consular officers abroad and passport specialists at domestic passport agencies and centers can advise the applicant that genetic testing may prove the validity of the relationship in cases where insufficient evidence has been presented to support the relationship. The passport applicant is responsible for choosing any American Association of Blood Banks (AABB) accredited lab to conduct the testing, from the list provided on the AABB website. You should not make any arrangements with a local lab, or local agent who represents a particular lab. The applicant is entirely responsible for choosing the lab, as long as it is an AABB-accredited organization.

See ...

- AABB Relationship Testing Accreditation Program
- AABB Accredited Relationship Testing Laboratories

- b. For overseas applicants, the post panel physician, at a reasonable cost, should perform the sample collection.
- c. For domestic passport applications, the passport applicant may have the sample collected by an accredited facility following AABB procedures for sample collection and transmittal to an AABB accredited laboratory for testing.
- d. The sample collection should be a buccal swab whenever possible. The use of the buccal swab eliminates many of the problems associated with transporting blood samples, and the accuracy is the same as a test done using blood samples.
- e. Posts abroad, passport agencies, and centers are authorized to provide information to applicants about DNA testing and to adjudicate citizenship claims based on DNA evidence consistent with this Appendix and 7 FAM 1100 generally. **You are not required to obtain prior authorization from CA/OCS or CA/PPT.**
- f. **Questions ? Contact:**
 - (1) Domestic passport agencies and centers may consult CA/PPT/L/LE (CAPPTAdjQ@state.gov).
 - (2) Posts abroad may consult CA/OCS/PRI (ASKPRI@state.gov) and CA/FPP.

- g. Passport agencies/centers, and posts abroad may wish to use the CA information sheet on genetic testing as a handout in cases where genetic testing is indicated.

See: CA Internet DNA and Parentage Blood Testing

7 FAM 1140 APPENDIX A ESTABLISHING PROCEDURAL SAFEGUARDS

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- a. To assure the integrity of DNA testing results, all stages of DNA testing must be conducted under appropriate safeguards.
- b. These safeguards must include strict controls concerning protection of the chain of custody of biological samples (usually buccal/cheek swabs), identification of the parties to be tested (generally including photographing and even fingerprinting of the individuals tested), and correct preparation of test results.
- c. Additionally, some posts have instituted internal controls over the handling of citizenship cases involving DNA testing, based on the local context and working conditions.
- d. Post specific internal controls involving DNA testing and citizenship should be reported to CA/OCS/PRI (ASKPRI@state.gov) and CA/FPP in case there are questions from the public.
- e. Post specific internal controls should also be posted on the post's websites as general information to the public.

7 FAM 1150 APPENDIX A GENETIC TESTING PROCEDURES

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- a. The applicant and/or parent must select a laboratory, contact the laboratory directly, and make the necessary arrangements (including payment) for conducting the genetic test.
- b. Domestic passport agencies/centers do not observe the collection of samples and procedures established by the AABB accredited testing facility should be followed for collection of testing samples domestically. This is the responsibility of the laboratory conducting the testing in coordination with the facility collecting the sample. If a sample is to be collected from a family member abroad, the procedures outlined below should be followed.

- c. When the samples are to be collected abroad, the laboratory will send a testing kit and explicit instructions to the post's panel physician (see 9 FAM 42.66 Exhibit II), either directly or through the consular section. **Department of State medical officers and facilities may not be used for the collection of biological samples for genetic testing purposes.**
- d. Consular officers are responsible for taking necessary safeguards against tampering with the process in accordance with guidelines provided by the AABB accredited laboratory conducting the DNA testing. The laboratory will provide very specific instructions regarding collection of the sample. This includes documentation of the identity of the persons being tested and chain of custody of the sample and shipment of the sample by the panel physician or consular section to the AABB accredited laboratory. Consular managers have discretion, based on local fraud conditions and the vulnerability of panel physicians to outside pressure, to determine whether or not the presence of a consular officer (or associate) is required to ensure adherence to proper safeguards.
- e. Following the sample collection process, the panel physician should return the test kit directly to the appropriate laboratory by the most secure and expedient method (generally, by express mail). The post panel physician should ensure that full documentation, including supporting forms, fingerprints, photos of the donors, and signatures of the donors, phlebotomist etc., requested in the test kit, accompany the form. This documentation is needed to prove the chain of custody. Under no circumstances may posts use the diplomatic pouch to return samples to the testing laboratory.

7 FAM 1160 APPENDIX A COMMUNICATING THE TEST RESULTS

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- a. In all phases of testing, communication of the results of the test must be directly between the laboratory and the consular officer or the senior passport specialist at a domestic passport agency/center.
- b. The laboratory should ensure that all test results are delivered to the passport agency/center or consular officer in a manner that precludes tampering.
- c. Under no circumstances should any other party, including those being tested, be permitted to carry or transport biological samples or test results.
- d. Since the applicant or parent is bearing full financial responsibility for

testing, however, CA has no objection to that person also receiving a copy of the results directly from the laboratory or panel physician.

7 FAM 1170 APPENDIX A CHOOSING A TESTING FACILITY

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- a. CA requires that any DNA for citizenship purposes must be done by a lab that is accredited by the American Association of Blood Banks (AABB).
- b. Names of AABB accredited labs are available on the AABB web page.
- c. The list of laboratories on that site is based on the physical location of the lab's headquarters but that the operations of most labs are not restricted to that location.
- d. Many of the laboratories operate nationally, therefore the applicant/parent should be able to choose from the full list of AABB laboratories which conduct DNA testing.

7 FAM 1180 APPENDIX A TYPES OF TESTS AND METHODS THAT CAN BE USED

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- a. While genetic tests cannot be required, we can determine which tests are acceptable for use.
- b. DNA testing is now used in over 99% of all parentage tests performed by AABB accredited labs.
- c. The types of tests used by the DNA scientific community continues to evolve, but currently, the Polymerase Chain Reaction-Short Tandem Repeat (PCR-STR) and the Restriction Fragment Length Polymorphism (RFLP) methods are the two tests that the Department believes to be the most advanced, offering the best results.
- d. DNA testing is the most accurate and widely available technology to test a biological relationship. It is preferred over older technologies such as human leukocyte antigen (HLA) and basic red cell antigens "A, B, O" blood typing because it does not require blood samples and it is more accurate when not all parties are available for testing or when the other possible father (in a paternity case) or mother (in a maternity case) is thought to be related to the tested party. DNA technology should be the only method accepted for proof of a biological relationship. DNA testing reliability has advanced to an industry-accepted standard of 99.5 percent. Consequently, for citizenship purposes, passport specialists and consular

officers may accept only test results that provide this degree of certainty with respect to paternity/maternity. Test results with a lower percentage standard need not automatically result in a conclusion of non-paternity/maternity, however. A test that supports paternity/maternity to a degree less than 99.5 percent generally should be followed by retests to determine if 99.5 percent accuracy can be achieved. If, after several attempts, it is not possible to reach the 99.5 percent level, and the passport specialist/consular officer remains unconvinced of the bona fides of the relationship in question, the application should be denied and the appropriate lookout be placed in the Consular Lookout and Support System (CLASS).

- e. Test samples can be acquired either through the use of buccal swabs or through the drawing of blood.
 - (1) The Department recommends using buccal swabs when possible, as this method eliminates many issues that can arise with transporting the samples to approved laboratories.
 - (2) Cells are collected from the inside cheek using a long cotton swab. Cheek swabs are preferred over blood samples. Cheek swabs are easier to collect, painless, and non-invasive. These swabs are easier to ship, the accuracy of a DNA test conducted with a cheek swab is equivalent to a test conducted using a blood test, and, unlike blood, cheek swabs are not considered to be bio-hazardous. **Under no circumstances should consular officers attempt to collect samples themselves.**
 - (3) If, in the future, new tests are developed which achieve, or surpass the qualities of these two tests, CA will change this guidance.

7 FAM 1190 APPENDIX A COUNTRIES THAT PROHIBIT SHIPMENT OF BIOLOGICAL MATERIALS

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- a. CA is aware that some countries prohibit the transporting of biological materials.
- b. Posts in such countries should contact CA/OCS/ACS, CA/OCS/PRI (ASKPRI@state.gov) and CA/FPP and advise regarding availability of DNA or human leukocyte antigen HLA testing facilities in the host countries.
- c. After reviewing the bona fides of the host country facility based on information provided by the post on accreditation and procedures, CA will consider whether it is possible to authorize use of non-AABB accredited

facilities in that country. It should be noted that the AABB accredits DNA testing facilities in foreign countries including, but not limited to Canada, the Dominican Republic, and the United Kingdom.