



Teleconference on Biological Relationship Testing: Opportunities and Challenges October 30, 2008

The following are comments and questions from the teleconference. On March 20, 2009, USCIS provided the Ombudsman with answers to the questions noted below.

Comments

1. **Relevance of DNA Test** – One caller said the Denver Field office requested a DNA test to establish a familial relationship as a means of testing a naturalization applicant's credibility, rather than to prove a fact material to the benefit sought. The caller questioned USCIS' policy basis for requesting this information.
2. **Requests for Evidence (RFEs)** – One caller noted that some RFEs from the California Service Center state that a licensed phlebotomist must collect the DNA sample. The caller indicated that this was a problem because: (1) some states do not license phlebotomists; (2) no special expertise in blood-drawing is needed for someone to be trained in proper collection of cells from a subject's cheek for a buccal swab [*Buccal is the "Cheek Swab" Test. A buccal swab is soft and resembles a large Q-Tip. It is used to collect a sample of cheek cells by simply rubbing the inside of the cheeks. It is as accurate as blood, as the DNA is the same.*]; and (3) requiring a blood sample would increase the cost of the test beyond that involved in the buccal technique.
3. **Lab List in RFE** – Several callers suggested that it would be helpful for USCIS to include information regarding the labs whose results USCIS will accept -- AABB-accredited labs – either with a printed list or by listing the AABB web address, www.aabb.org, in the RFE itself.
4. **DNA Evidence Equally Reliable from Cheek As from Blood** – A caller from a testing lab explained that the credibility and accuracy of DNA results do not differ from skin versus blood cells. However, the caller noted that blood evidence is more perishable and requires specialized handling for collection and storage to avoid contamination and/or spoilage that would compromise its viability for testing purposes.
5. **Middleman 'Brokers' Claiming to Represent AABB-Accredited Labs** – Callers reported the problem of dealing with people claiming to have connections to, or passing themselves off as representing, labs with the proper accreditation for USCIS to accept their results. Other callers said that these brokers usually have no connection either to AABB or to the labs. Moreover, AABB-accredited labs have to assure the reliability of samples they test and impose quality control on technicians who gather samples.
6. **Overseas Test** – A caller described problems with relationship testing in certain countries based on the lack of panel physicians and/or the lack of participation by the Department of State in monitoring sample collection.
7. **Refugees and DNA Tests** – One caller noted that refugees are usually willing to provide DNA evidence, which is often the only evidence available (i.e., the same circumstances that make people refugees – war or natural disaster – often destroy traditional documentary evidence of relationship). However, USCIS' 87-day RFE response time does not allow enough time to obtain this information. A caller indicated that the process truly takes about four to six months.
8. **Cost of DNA Testing** – A caller from a lab stated that the largest portion of DNA testing costs is not for the lab work itself, but the high cost of shipping test kits to/from the test site and all the chain-of-custody handling required.
9. **DNA Liaison Officer** – Another caller from a lab suggested that DHS create an official liaison position to centralize in one person the responsibilities for coordinating DNA issues within the department, and between DHS and other government agencies.

Questions and Answers

1. Can USCIS Require A DNA Test – A caller asked for clarification as to whether DNA testing is voluntary. Specifically, why do Requests for Evidence request “blood testing” when most labs perform DNA testing?

USCIS Response: When primary or secondary evidence of an eligibility requirement for a particular benefit, such as a certain family relationship, is inconclusive or unavailable, USCIS may only *suggest* that DNA testing results be submitted under existing legal authority. By regulation, however, USCIS is permitted to *require* blood testing. Refusal to submit a blood test when requested may constitute a basis for denial of the petition. USCIS always has the authority to determine, in each case, whether the totality of the evidence submitted to demonstrate a family relationship is sufficient to meet the applicant’s or petitioner’s burden to demonstrate that relationship. An application or petition may be denied if that burden is not met. Voluntary submission of DNA evidence may be the best way for some individuals to meet their burden to show the claimed biological relationship.

2. Possible Mixed-Up Sample – A caller asked what can be done to prove that a mistake was made in the DNA analysis. This caller emphasized the cost of DNA testing as an obstacle to retesting.

USCIS Response: If a petitioner or applicant believes that a mistake has been made in the DNA testing results, he or she should first contact the lab about possible ways to correct the problem and to obtain an accurate DNA analysis that should be sent directly to USCIS for consideration in the individual’s case. If USCIS has already completed its adjudication of the case, the petitioner or applicant may request that USCIS reconsider its decision in light of the new DNA analysis. However, whether to grant the request for reconsideration remains within USCIS’ discretion. Denials of certain petitions and applications may also be appealed to the USCIS Administrative Appeals Office (AAO) under USCIS regulations. If persuaded that the new DNA analysis should be considered, the AAO may remand the case to the USCIS office with responsibility for adjudicating the application or petition for further review. USCIS understands that DNA testing can be costly, but it should be noted that USCIS is only suggesting testing – not requiring it.

3. Probability Threshold for Non-Parent/Child Cases – One caller observed that USCIS sets a single percentage for DNA tests regarding paternity (parent/child) relationships. However, this percentage would effectively exclude from consideration half-siblings whose relationship would entitle them to immigrate as beneficiaries of immigrant petitions. Does USCIS set the probability threshold for other relationships (e.g., parent/child; half sibling/half sibling)?

USCIS Response: No, USCIS does not set a probability threshold for non-parent/child cases. The type of test performed and facts of the case will affect the percentage that USCIS will accept for establishing a parental relationship.

4. Pervasiveness of DNA Testing – A caller asked how many applicants are asked to provide DNA evidence of relationship.

USCIS Response: USCIS does not keep statistics on the pervasiveness of DNA testing requests. There is some statistical information available on individuals requested to participate in a voluntary DNA testing pilot in the refugee program in East and West Africa. Last year, the U.S. Department of State (DOS) and the Department of Homeland Security (DHS) jointly conducted a voluntary DNA testing pilot program among refugees in East and West Africa. A fact sheet describing that pilot is available on the DOS website at <http://www.state.gov/g/prm/rls/115891.htm>

5. Submit DNA Evidence with Original Petition – One caller asked whether it is possible to submit a DNA result proving the required relationship together with the petition to save time, particularly where an RFE is considered likely due to shortcomings with the available primary or secondary evidence.

USCIS Response: We are currently reviewing our family relationship and DNA testing policies; we are considering various options that may speed up the adjudication process.

6. Country Profiles – A caller asked whether USCIS employs certain criteria – e.g. high documentary fraud rate, high frequency of attempts to immigrate based on unsupported relationship –to make it more likely that people from specific countries would be asked for DNA evidence.

USCIS Response: When initial and secondary forms of evidence have proven inconclusive field offices may suggest DNA testing as a means of establishing the relationship. A request for DNA testing is based on the inconclusiveness of primary and secondary evidence in individual cases and is not targeted to specific countries.

7. DNA Results to USCIS and U.S. Consulates – One caller asked whether, even if a DNA test excluded a claimed biological relationship, the testing lab would send the results to the interested governmental agency, as well as notify the parties who requested and paid for the test.

USCIS Response: Since the applicant or petitioner bears full financial responsibility for testing, USCIS has no objection to that person receiving a copy of the test results from the laboratory or panel physician. The applicant/petitioner should make a request directly to the lab for a copy of the lab's DNA testing results report

8. Petition for an Informally Adopted Child - A caller asked what, if anything, an adult can do to petition a non-biological child (e.g. where there is a *de facto* adoption of the child into the household without a legally recognized adoption).

USCIS Response: Where there is no legal relationship, an adult cannot petition for a non-biological child. In order for the adult to be able to file an immigration petition for the child, the adult must legally adopt the child. After adoption, the child may be petitioned for either through the orphan process, or through Hague Adoption Convention process (i.e. Form I-600/A or Form I-800/A, respectively) or via an I-130, Petition for Alien Relative (adopted child).

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