

UNCLASSIFIED 17 STATE 6984

Jan 24, 2017

From: SECSTATE WASHDC

Subject: Update to 9 FAM 601.11 Permitting Direct Sibling-to-sibling and Half-Sibling DNA Testing as Evidence of Relationship

1. This cable provides revised DNA test guidance to consular officers in light of a recent Board of Immigration Appeals (BIA) case, Matter of Ruzku, 26 I&N Dec. 731 (BIA 2016).

3. Consular Officers should be made aware that 9 FAM 601.11-1 (A)(3) and 9 FAM 601.11-1 (B) have been amended to allow for submission of direct sibling-to sibling and half-sibling DNA test results as one way of establishing sibling relationships. Consular officers may now recommend direct sibling-to-sibling DNA testing and accept results of 99.5 percent or greater as probative evidence. Results with a probability of less than 99.5 percent may still represent a bona fide biological relationship, and the officer may not use such results alone to exclude the relationship. Please see amended FAM notes below for additional explanation.

4. 9 FAM 601.11-1 has been amended as follows:

9 FAM 601.11-1(A) Introduction to DNA Testing, Accredited Labs

a. General Information on DNA Testing:

(1) DNA Testing: Deoxyribonucleic Acid (DNA) testing is the most accurate and widely available technology to test a biological relationship. The types of tests used by the DNA scientific community continue to evolve; currently, the Polymerase Chain Reaction-Short Tandem Repeat (PCR-STR) and the Restriction Fragment Length Polymorphism (RFLP) methods are the two tests that we believe to be the most advanced, offering the best results. These tests are preferred over older technologies such as human leukocyte antigens (HLA) and human blood alleles (ABO) blood typing because they do not require blood samples and are more accurate when all parties are not available for testing and/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.

(2) Maternity/Paternity Relationships: Only accept test results reporting a 99.5 percent or greater degree of certainty with respect to paternity/maternity as sufficient to support a biological relationship between a parent and child in visa cases.

(a) Retest(s): However, retest(s) can follow a test that supports paternity/maternity to a degree less than 99.5 percent. If, after several attempts, it is not possible to reach the accepted level, and you remain unconvinced of the bona fides of the relationship in question, return the petition to the Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS) via the National Visa Center along with a memo explaining the return and a copy of the DNA test(s) results.

(b) IR-2 Cases: Keep in mind that in IR-2 cases, the definition of a child is not limited to a biological relationship and thus the adjudicator must also rule out adoptive and step-children relationships before returning a petition.

(3) Direct Sibling-to-Sibling Relationship Testing: You may accept direct sibling-to-sibling DNA test results reporting a 99.5 percent or greater degree of certainty. However, be cautioned that bona fide sibling-to-sibling biological relationships may result in DNA test results less than 99.5 percent of certainty. Therefore, a sibling-to-sibling DNA test with results less than 99.5 percent, is often not sufficient evidence on its own to show that the required relationship is non-existent.

(a) The BIA, in Matter of Ruzku 26 I&N Dec. 731 (BIA 2016), concluded that test results of 99.5 percent or greater certainty "should be accepted and be considered probative evidence" of the sibling relationship. However, the BIA found there is not a particular percentage of probability that alone would be sufficient to establish a claimed sibling relationship.

(b) Lower Probability Results: Direct testing between siblings may show an apparent lack of relationship even when the individuals are full siblings because of the variations in genetic contribution by each parent to the individual children. However, in cases in which the sibling-to-sibling test results are lower than 99.5 percent you can still make a finding - based on other evidence and in the totality of the circumstances - that the sibling-to-sibling relationship is legitimate.

Totality of Evidence for Bona Fide Relationships: You should look at the totality of the evidence, including DNA results, if available, when determining whether a legitimate sibling relationship exists. A bona fide biological sibling relationship may exist even with a sibling to sibling DNA result of less than a 99.5 percent degree of certainty.

(d) Sibling to Parent Test: A direct sibling test that includes parental testing is generally more reliable than sibling-to-sibling testing, and you may consider sibling-to-parent tests that meet the 99.5 percent certainty standard as establishing the sibling relationship through DNA.

(4) Half-Sibling Tests: You may accept DNA results supporting halfsibling relationships, but must keep in mind that half-siblings have shared genetic contribution from only one parent. As with full-sibling results, you should consider test results with a 99.5 percent or greater degree of certainty as "probative evidence."

9 FAM 601.11-1(B) Genetic (DNA) Testing

a. When to Recommend Genetic Testing to Verify Relationships:

(1) Genetic testing is a useful tool for verifying an alleged biological relationship when no other form of credible evidence is available in conjunction with a visa application. Commonly tested relationships requiring DNA testing include paternity, maternity, or full-siblingship. More distant relationships cannot be proven reliably using DNA testing.

(2) DNA technology is the only non-documentary method accepted for proof of a biological relationship. However, due to the expense, complexity, and logistical delays inherent in parentage testing, genetic testing should be used only if no other credible proof (documentation, photos, etc.) of the relationship exists. The process is time-consuming for the applicant, the

petitioner, and the consular section, and it does not necessarily yield conclusive results. Note that you may recommend DNA testing, but may not require it.

(3) When genetic testing appears warranted, 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 petitioner and/or beneficiary and paid to the laboratory in advance. In addition, caution the applicant that submitting to testing does not guarantee the subsequent issuance of a visa.

b. When Not to Recommend Genetic Testing to Verify Relationships:

(1) You may recommend DNA testing to establish a blood relationship that would qualify an applicant for an immigration benefit. You may not request DNA testing in an attempt to disprove a relationship. For example, do not request DNA testing between marital partners on suspicion that they are blood relatives.

(2) Recommend a DNA test of step-children only to establish paternity or maternity with the biological parent who is the spouse of the qualified petitioner. Do not recommend DNA testing to test for cousins, aunt/uncle, niece/nephew, or other such extended relationships, as these tests cannot reach the minimum requirement of 99.5 percent probability.