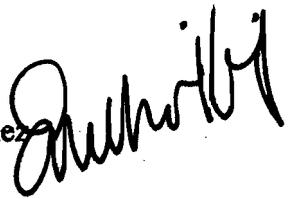




U.S. Citizenship
and Immigration
Services

Interoffice Memorandum

To: Prakash Khatri
USCIS Ombudsman

From: Dr. Emilio T. Gonzalez
Director, USCIS 

Date: July 5, 2006

Subject: Response to Recommendation #26, DNA Testing

On April 13, 2006, the Ombudsman sent to USCIS a recommendation regarding DNA testing.

Recommendation: That USCIS should (1) accept DNA test results as secondary evidence of family relationship (i.e. family relationships based upon blood—parent/child or siblings); (2) grant authority to directors to require DNA testing; and (3) initiate a DNA testing pilot to study the impact of requiring DNA as evidence of family relationship.

Rationale: The Ombudsman states that DNA testing would bring simplicity and certainty to the adjudications process, which would benefit both USCIS and its customers. These benefits would justify the additional cost of DNA testing but may result in cost savings equal or greater than the added expense.

Benefits: The Ombudsman states that the benefits for USCIS include a scientifically conclusive means of verifying family relationships; a certainty to USCIS adjudications; an increase in adjudicators' confidence in their decisions; a reduction in adjudicative errors, requests for evidence (RFEs), and interviews; an allocation of USCIS resources to other activities such as backlog reduction; no risks; and would likely enhance national security by deterring the filing of fraudulent petitions, which would reduce the time and expense of adjudications generally. The benefits for petitioners and beneficiaries would include a simple, scientific means to establish family relationships and the prospect of the lessening or elimination of the burdens of obtaining documents from overseas, responding to RFEs and enduring interviews with USCIS and DOS officials.

USCIS response to the specific sequential proposals in the Ombudsman's Recommendation:

1. DNA testing is not listed as primary or secondary evidence of family relationship in USCIS regulations and forms.
 - The former INS issued a policy memo to field offices, which does in fact state that directors may suggest DNA testing as secondary evidence to establish a claimed family relationship. And although the memo states that a director has no statutory or regulatory authority to require DNA testing, we note that our regulations at 8 CFR 103.2(b)(8) state that where evidence submitted does not fully establish eligibility for the requested benefit or raises questions about underlying eligibility, we may request additional evidence (which may include blood tests), but we are not limited or precluded from accepting other kinds of evidence, such as DNA test results.
2. USCIS should grant authority to directors to require DNA testing.
 - USCIS is already in the process of drafting regulations to update the regulations at 8 CFR 204.2(d)(vi) to require DNA testing where fraud is suspected, or where there is neither primary evidence of a claimed family relationship, such as birth certificates, nor contemporaneous secondary evidence such as school records. USCIS estimates it will submit the regulations to DHS in December 2006. USCIS is not currently requiring submission of DNA testing in all cases due to concern over limited accessibility and high cost of DNA testing. For many, DNA testing is out of their financial reach. However, USCIS does not preclude requiring DNA testing as a standard procedure sometime in the future as new technology and competition make such testing more widely available and affordable.
3. USCIS should initiate a DNA testing pilot to study the impact of requiring DNA as evidence of family relationship.

As indicated in USCIS' response above to recommendation 2, DNA testing results are encouraged and accepted in cases where the alien applicant cannot clearly establish the requisite family relationship. USCIS is also willing to consider rulemaking to require DNA testing for all family petitions when the industry further develops and if it becomes more available and affordable worldwide. In the meantime, USCIS is considering conducting a pilot overseas, although a location has not yet been determined. We will keep you informed of our decision.