

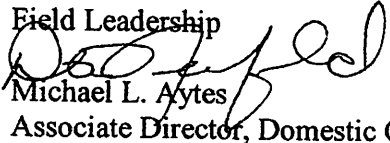


U.S. Citizenship
and Immigration
Services

MAR 19 2008

HQORPM AD07-25
HQORPM 70/8

Memorandum

TO: Field Leadership
FROM: 
Michael L. Aytes
Associate Director, Domestic Operations
SUBJECT: Genetic Relationship Testing; Suggesting DNA Tests
Revisions to the *Adjudicators Field Manual* (AFM) Chapter 21
(AFM Update AD07-25)

1. Purpose

This guidance replaces the memorandum entitled List of American Association of Blood Banks Accredited Parentage Testing Laboratories, issued April 7, 2005.

This guidance reminds officers that AABB – formally the American Association of Blood Banks - is not a DNA testing laboratory. Rather, AABB is the accrediting body for DNA testing laboratories. When a DNA testing laboratory submits DNA test results to the United States Citizenship and Immigration Service (USCIS) regarding the existence of a biological relationship, USCIS requires that laboratory to have an AABB accreditation.

AABB publishes their list of accredited laboratories online. Officers should not contact AABB directly and they should discourage petitioners from contacting AABB directly.

This guidance also reminds officers that USCIS cannot require DNA testing to establish a claimed biological relationship.¹ However, in situations where credible evidence is insufficient to prove the claimed biological relationship, officers may suggest and consider DNA testing results. In such cases, the petitioner must select an accredited laboratory, contact the laboratory directly, and make the necessary arrangements for conducting the tests.

This guidance instructs officers that when they suggest DNA testing, they must identify explicitly the relationship to be tested for.

2. Contact Information

Questions regarding the guidance contained in this memorandum should be directed to Fred Ongcapin, Regulations and Product Management, Domestic Operations Directorate, through the appropriate supervisory channels.

3. Use

This memorandum is intended solely for the guidance of USCIS personnel in performing their duties relative to adjudications of applications. 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 by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

4. AFM Update

Accordingly, the *AFM* is revised as follows:

☞ 1. The bulleted list following the fourth paragraph in *AFM* 21.2(d)(1)(B) is revised to read as follows:

- DNA testing is absolutely voluntary;
- The costs of DNA testing and related expenses (such as doctor's fees and the cost of transmitting testing materials and blood samples) must be borne exclusively by the petitioner;
- DNA test results be specific to the relationship in question;* and
- DNA test results do not guarantee the approval of the petition.

¹ USCIS policy concerning DNA testing was established in a July 2000 memorandum from Michael D. Cronin, then Acting Executive Associate Commissioner of the INS, which allows field offices to "suggest" DNA testing when other forms of evidence have proved inconclusive. The July 2000 memorandum states that while 8 CFR 204.2(d)(2)(vi) allows directors to require Blood Group Antigen or Human Leukocyte Antigen (HLA) blood parentage tests, there is no similar statutory or regulatory authority allowing them to require DNA testing. See Memorandum from Michael D. Cronin, Acting Ex. Assoc. Comm., Programs, HQADN, Guidance on Parentage Testing for Family-Based Immigrant Visa Petitions (July 24, 2000).

*If a relationship is in question, and you have suggested DNA testing for additional evidence, you must identify the specific genetic relationship to be tested. It is not sufficiently specific for you to ask whether two people are "related;" rather, you must indicate how you think they may be related – parent/child, grandparent/grandchild, siblings, etc. For example, asking whether the putative husband and putative wife are actually siblings, rather than unrelated, is a legitimate question that may be answered by the testing laboratory. Furthermore, it is important to note that DNA testing that establishes a parent-child relationship does not negate any requirement for "legitimation" that may apply to certain parent-child relationships, nor would it support approval of a petition or application if the legal parent-child relationship was terminated by adoption.

☞ 2. AFM chapter 21.2(d)(1)(G) is revised in its entirety to read as follows:

(G) Parentage Testing Procedures. AABB accredits parentage-testing laboratories for a two-year period. The current list of AABB accredited parentage testing laboratories is available online at aabb.org. Officers must pay close attention to the '.org' in the online address to be sure they have the correct website and the correct list of accredited laboratories. Officers may accept parentage testing results only from laboratories on this list.

Officers should not contact AABB directly and should discourage petitioners from contacting AABB directly. AABB does not provide DNA testing directly. AABB merely accredits laboratories and publishes the list of accredited laboratories online.

The accreditation standards were developed by the committee on parentage testing of AABB under a grant from the Federal Office of Child Support Enforcement of the U.S. Department of Health and Human Services and with assistance of special consultants and representatives from the American Bar Association, American Medical Association, American Society of Clinical Pathologists, American Society for Histocompatibility and Immunogenetics and the College of American Pathologists.

The burden of proof is on the petitioner to show that the laboratory chosen is accredited by AABB.

When a field office requires blood testing or when it suggests DNA testing, it should provide the petitioner with the list of AABB accredited laboratories and explain to the petitioner that state designations on the list are for laboratory headquarters. Many laboratories have collection sites in many different states and locations. The petitioner must select a laboratory, contact the laboratory directly, and make the necessary arrangements for conducting the tests. To

Genetic Relationship Testing

Revision to Adjudicator's Field Manual (AFM) Chapter 21.2(d) Appendix 21.3 American Association of Blood Banks (AFM Update AD07-25)

Page 4

ensure the integrity of the test results, all stages of parentage testing must be conducted under appropriate safeguards. These safeguards must include strict controls concerning:

- protection of the chain of custody of blood or tissue samples;
- identification of the parties to be tested, generally by photographing individuals being tested; and
- correct presentation of test results.

Communication should be directly between the laboratory and the civil surgeon or panel physician or the field office. Under no circumstances should a third party, including the individuals being tested, be permitted to carry or transport blood or tissue samples or test results. Since the applicant 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. It is imperative that the same facility tests both the alleged child and the alleged parent(s). Where the petitioner is physically present in the U.S., a U.S.-based lab must conduct the tests and relay the results. Instructions usually require the participation of a witness, identification taken from all (adult) parties involved, and photographs taken of all parties.

☞ 3. *AFM* Appendix 21-3, American Association of Blood Banks is revised in its entirety to read as follows:

Appendix 21-3 AABB.

Editor's Note: The following information was obtained from:

AABB
8101 Glenbrook Road
Bethesda, MD 20814-2749

Website: www.aabb.org

Part A: Accredited Parentage Testing Laboratories. A current list of AABB accredited parentage testing laboratories can be viewed at: <http://www.aabb.org>. You must access the AABB website set forth above to obtain current laboratory information.

Please be advised that the AABB website lists only the headquarters or primary location for each AABB laboratory. In fact, many of the laboratories listed have multi-state and/or multi-site locations despite being listed under only one state. Therefore, it is necessary to go to the selected laboratory's website to identify all locations and contact information for that particular laboratory.

Genetic Relationship Testing

Revision to Adjudicator's Field Manual (*AFM*) Chapter 21.2(d) Appendix 21.3 American Association of Blood Banks (*AFM* Update AD07-25)

Page 5

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

AD05-25 [Insert date]	Chapter 21.2(d): Appendix 21-3	This Memorandum revises Chapter 21.2(d) and Appendix 21-3 of the Adjudicator's field Manual (<i>AFM</i>).
--------------------------	-----------------------------------	---

Distribution List: Service Center Directors
National Benefits Center Director
Regional Directors
District Directors
Field Office Directors