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IMMIGRATION DIRECTORATES' INSTRUCTIONS

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**CHAPTER 8
SECTION 5A**

CHILDREN

DNA TESTING OF CHILDREN

1. INTRODUCTION

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

DNA (Deoxyribonucleic Acid) is present in all human cells and contains a genetic code unique to each individual. DNA profiling, also known as 'genetic fingerprinting', is a scientific technique for analysing blood or other tissue samples. By comparing the genetic profile of a child with that of its claimed parents or siblings, the true biological relationship between each of the persons tested can be established to a very high degree of certainty in most cases. Accordingly DNA test results will normally (although not invariably) provide conclusive evidence as to whether an alleged child is related as claimed to one or both of his alleged parents. DNA reports can also assess the likelihood that an alleged child is in fact a more distant relative (e.g. a nephew) or not related to the alleged parent(s) at all.

1.1. Application of DNA testing to immigration cases

DNA testing has become widely used in criminal investigations and paternity cases. It is generally accepted that DNA profiling is a virtually foolproof means of establishing identity and parentage. Until 1991 it was up to the applicant to decide whether or not to obtain DNA evidence in support of his application or appeal. In January 1991, however, a government scheme was introduced, which enables entry clearance officers to offer to arrange DNA tests in cases where they are not satisfied that persons seeking admission as children are related as claimed to their United Kingdom sponsor. ***These arrangements are applicable only to persons applying for settlement (or family reunion where the sponsor is a refugee but not where the sponsor has exceptional leave to remain) for the first time; they do not apply to persons making a further application on the same basis.***

1.2. DNA testing in entry clearance applications

Where the applicant agrees to take a DNA test, the ECO arranges for blood samples to be taken from the applicants at the post overseas and sent to Orchid Cellmark for analysis (together with a blood sample provided by the sponsor in the United Kingdom under supervised conditions). A report is sent direct to the post and a decision is made on the basis of the information contained in the report. Cellmark is the company which currently holds the contract with UK Visas to provide DNA testing for all Entry Clearance Applications where such tests are deemed necessary. Therefore Cellmark is the only company who can be used by Entry Clearance Officers.

1.3. UK Border Agency cases

These arrangements mean that the vast majority of cases involving DNA evidence will be dealt with by the ECO rather than the UK Border Agency. Although *the UK Border Agency* used to consider cases for over-age re-applicants who had been wrongly refused and who subsequently re-applied with DNA evidence of their relationship to the sponsor by way of the DNA & over-age re-applicants concession, the DNA & over-age re-applicants concession was abolished on 24th August 2002.

However cases do still arise in which UK Border Agency caseworkers will need to be satisfied that a claimed relationship is genuine, and DNA testing is one means of evidence which applicants may provide in support of this issue.

Although UK Visas have a contract with Cellmark Diagnostics for the purposes of Entry Clearance Applications, caseworkers dealing with in-country applications should accept DNA test reports from any accredited organisation.

The results of DNA tests can usually be accepted as evidence in after-entry cases but it is entirely up to the applicant to arrange *and* pay for this test. The UK Border Agency *will not make arrangements or payments for this - there are no DNA testing contracts for in-country applications.*

In cases involving children, therefore, where proof of the existence of the relationship between the child and the sponsor cannot be satisfactorily established, even after further enquiries have been made by the caseworker, it may only be compelling evidence, such as a DNA test that will resolve the issue.

It must be emphasised that whether or not an applicant decides to undergo DNA testing in an on or after entry case is entirely for him/her to decide.

2. APPEALS

A small number of DNA cases may crop up in the appeals system, either because the application was refused before the Government Entry Clearance contract was introduced in 1991, or because the applicant had previously been refused and was therefore not eligible under the Government scheme, which applies only to first time settlement applicants.

Where DNA evidence is produced by an applicant in support of an **outstanding appeal**, caseworkers may be called upon to decide whether the case should be conceded in the light of this new evidence.

Such cases may arise at short notice, and the objective should be to consider the DNA evidence and, **if appropriate**, concede the case in advance of a hearing if at all possible. In such cases the DNA evidence will normally be provided by the applicant or his representatives, and **care must be taken ensure that the correct individuals have given blood.**

2.1. Reports which may be accepted by caseworkers

Caseworkers may only accept a DNA test report from an organisation accredited by Her Majesty's Court Service (HMCS). HMCS. is empowered to prescribe the conditions that a body must meet in order to be eligible for accreditation. The body or company must apply for accreditation, have a valid ISO 17025 Certificate and undertake to comply with the Code of Practice and Guidance on Genetic Paternity Testing Services. (This Code of Practice is the responsibility of the Department of Health.)

At the time of this instruction, the accredited bodies were:

Caseworkers should therefore only accept DNA Test reports from the above nine organisations, and should note that this list is liable to change over time. In cases where caseworkers are unsure, the Complex Advice Team may be contacted for advice on 0208 196 0914.

Name: Alpha BioLaboratories Ltd
Address: Bioscience Building, Crown Street, Liverpool, L69 7ZB
Tel: 0845 505 0001
Fax: 0845 505 0002
Website: www.alphabiolabs.co.uk

Name: Anglia DNA Services Ltd
Address: Norwich Research Park, Colney Lane, Norwich, NR4 7UH
Tel: 08454 565 365
Fax: 01603 450 945

Website: www.angliadna.co.uk

Name: Barts and The London, Queen Mary University of London
Address: Haematology ICMS, Barts and The London, 4 Newark Street, London, E1 2AT
Tel: 020 7882 2274
Fax: 020 7882 2183
Website: www.icms.qmul.ac.uk

Name: Complement Genomics Ltd. (trading as dadcheck®)
Address: Unit 128i Bioscience Centre, Business and Innovation Centre, Sunderland, SR5 2TA
Tel: 0191 516 6500/6632
Fax: 0191 516 6005
Website: www.dadcheck.com

Name: Crucial Genetics
Address: F1 House, Road 4, Winsford Industrial Estate, Winsford, Cheshire, CW7 3QN
Tel: 0870 8888 088
Fax: 0870 8888 089
Website: www.crucialgenetics.com

Name: Eurofins Medigenomix GmbH
Address: Fraunhoferstr 22, D82152, Planegg/Martinsried, Germany
Tel: 0800 321 3236
Fax: 020 8711 6700
Website: www.eurofinsmedigenomix.co.uk

Name: The Forensic Science Service Ltd
Address: Sales and Operational Planning Office, Trident Court, 2920 Solihull Parkway, Birmingham Business Park, Birmingham, B37 7YN
Tel: 0845 120 7272
Fax: 0121 770 9289
Website: www.forensic.gov.uk/html/services/analytical-solutions/dna/

Name: LGC Diagnostics Department
Address: LGC Building, Queens Road, Teddington, Middlesex, TW11 ONJ
Tel: 020 8943 8400
Fax: 020 8943 8401
Website: www.lgc.co.uk/divisions/lgc_forensics.aspx

Name: Orchid Cellmark Ltd
Address: Blacklands Way, Abingdon Business Park, Abingdon, Oxon, OX14 1YX
Tel: 01235 528 609
Fax: 020 8943 8401
Website: www.cellmark.co.uk

2.2. Content and meaning of the DNA report

The report will assess the nature of the relationship between each of

the persons tested and state the **probability** of such a relationship (e.g. it is “x” times more likely that “A” is the father of “B” rather than a close relative). DNA reports frequently refer to **1st degree** or **2nd degree** relationships:

- * a **1st degree** relationship means that the parties are either **parent and child** or **siblings**.
- * a **2nd degree** relationship means that the ‘child’ may be a **grandchild**, a **nephew** or a **half-sibling** of the alleged parent.

The report may also conclude that the persons tested are **more distantly related** (e.g. cousins) or **unrelated**. It should be noted that while DNA profiling can indicate the nature of the relationship in question (i.e. a 1st degree, 2nd degree or more distant relationship) it cannot be more precise than that.

Thus, if the relationship is a 1st degree relationship, we know that the parties are **either** parent and child **or** siblings, but DNA testing cannot distinguish between one and the other (although it may well be obvious taking the history of the case as a whole).

2.3. Assessing DNA reports

In assessing DNA reports, the question to be addressed is whether the evidence establishes the relevant relationships on a balance of probability:

- * if a DNA report concludes that the probability of a claimed relationship is at least **three times greater** than any other relationship, this should normally be accepted as proof of that relationship **without further enquiry**;
- * where the DNA evidence concludes that the probability of the claimed relationship is only **twice as likely** (or less) than any other relationship, caseworkers should review the case as a whole. However, it must be remembered that even a low balance of probability **in favour** of the claimed relationship is substantial evidence and should be accepted **unless there is strong evidence to the contrary**.

The DNA report should be checked carefully to ensure that **all** of the children who are included in the appeal have been tested and are related as claimed to the alleged parents. **Care should be taken to ensure that the persons tested (both children and parents) are the same as those included in the application or appeal.** The fact that **some** children prove to be related as claimed does not constitute evidence in favour of **other children who were not tested**; refusal should be maintained in relation to any children not tested.

2.4. Action where relationship was the sole ground for refusal

If **relationship** was the **sole** ground on which the application was refused, and the relevant relationships have been established by means of DNA evidence, then the case may be conceded (or consideration given to whether the applicant may have the Right of Abode in the United Kingdom if applicant appears to have a claim to the right of abode (see **Chapter 1, Section 1, “Right of Abode”**).

The appellate authorities and the entry clearance officer should be advised accordingly, and the applicant or his representative should be invited to withdraw the outstanding appeal by completing and returning Form APP 9 to the relevant BIA Appeals Section.

2.5. Action where relationship was not the sole ground for refusal

Caseworkers should bear in mind, however, that relationship may **not** be the only issue, for example:

- * the children may have been over 18 at the time of the current application;
- * refusal may have been on grounds of maintenance and accommodation as well as relationship;
- * the entry clearance officer may not have been satisfied that the parents were validly married; or
- * only one parent may be settled in the United Kingdom.

In such cases it may be appropriate to maintain refusal on other grounds, as appropriate, **while making it clear that we now accept the claimed relationship**. Where refusal is maintained, the file should be minuted carefully so that the Presenting Officer knows what is the basis of refusal, and it may be advisable to write to the applicant or his representatives (copying the letter to the Clerk to the Adjudicator), setting out the UK Border Agency’s position.

2.6. Consideration as to whether child qualifies for admission on another basis

Paragraphs 2.7. - 2.9. below set out circumstances where even though a child is not related as claimed to both alleged parents, it may be necessary to consider whether the child qualifies for admission on some other basis or to seek further information from the applicant or his representatives. In these circumstances, the case should be

considered under the Immigration Rules ***which were in force at the time the application was lodged.***

2.7. Child unrelated or distantly related to both alleged parents

- * If there is evidence that a child, although ***unrelated*** or only distantly related to the alleged parents, has been brought up ***as a member of the family***, it is appropriate to consider whether the child qualifies for admission as a ***de facto adopted child***. (see **ANNEX R** to **Section 5** of this chapter).
- If one or both of the alleged parents are ***related*** to the child, consideration should be given as to whether the child would have qualified as a dependant of a relative other than a parent (i.e. there are serious and compelling considerations ***in respect of the child***, which make his exclusion undesirable, and suitable arrangements have been made for his care). Further guidance on this point is provided in **ANNEX M** (above).

2.8. Child related as claimed to father but unrelated to alleged mother

In such cases the child may have been born to another wife of the sponsor. An explanation of the true family relationships should be sought from the sponsor or his representatives. Caseworkers should try to establish whether the child has been brought up by and lives with the natural mother or the alleged mother. Where the child's natural mother is not seeking entry or does not qualify for admission, the sponsor would normally have to demonstrate that he had exercised ***sole responsibility*** for the child's upbringing. If the DNA evidence brings to light a previously undisclosed earlier marriage, it may be necessary to investigate questions of ***polygamy*** and ***legitimacy*** (see **Section 1** and **ANNEX M** (above)). If the sponsor declines to provide a satisfactory explanation which is consistent with the DNA evidence, refusal should be maintained.

2.9. Child related as claimed to mother but unrelated to alleged father

Great sensitivity is required in handling such cases as the child may be illegitimate, and the sponsor may be unaware of this (even if he has seen the DNA report he may not realise its implications). The best way forward may be to seek further information about the family's background and circumstances from their representatives. Where it appears that an illegitimate child has been brought up as child of the family, it will normally be appropriate to admit the child.

2.10. Action where a DNA report is submitted but no appeal was lodged or appeal was dismissed

Occasionally DNA reports may be submitted in relation to an application which was refused some time ago, and either no appeal was lodged or appeal was dismissed. It has been confirmed by the High Court that once an application has been determined, it cannot be re-opened simply because new evidence has come to light. If no application or appeal is outstanding, the sponsor or his representatives should be advised to make a fresh application for entry clearance at a British High Commission or Embassy overseas.

2.11. Where the applicant is over the age of 18 when a fresh application is lodged

Where such an applicant is over the age of 18 and makes a fresh application, he will not qualify for admission as a dependent child under Paragraph 297 of HC 395. Consideration should be given as to whether or not he qualifies for admission under Paragraph 317, which provides for the admission of children aged 18 or over in certain circumstances (see advice contained in **ANNEX W** to **Section 6** of this chapter, *“Dependent relatives”*).

2.12. Appeals checklist

- u is an application or appeal outstanding?
- u does the DNA test report show that each of the appellants is related as claimed to their alleged parents?
- u if so, was the application refused only on relationship grounds?
- u if not, does the case fall to be considered under any provision of the Rules?

If you are in any doubt about how to proceed, do not hesitate to refer the case to your line manager or consult the Complex Advice Team on 0208 196 0914 for advice.

3. OVERAGE RE-APPLICANTS CONCESSION

The concession in relation overage re-applicants was withdrawn with effect from the 24th August 2002. No applications citing the concession should be accepted after that date.

4. PROBLEMS IN DNA CASES

DNA cases may occasionally raise other issues not covered in this instruction. In these circumstances, caseworkers should not hesitate to refer the file via line management to the Complex Advice Team for advice. The following paragraphs deal with some of the more frequent problems which have arisen in DNA cases:

4.1. Adjudicator's recommendations

If an adjudicator makes a recommendation in a case where an applicant produces DNA evidence to rebut a previous refusal the adjudicator's recommendation should not be automatically accepted. Now the over-age reapplicants concession has been abolished over-age reapplicants will need to be considered under 317(i)(f). The reasons given by the adjudicator for including his recommendation are important. If it is based on dependency or compassionate circumstances, that will be more persuasive (as these factors are necessary pre-requisites for fulfilling the conditions of paragraph 317(i)(f) of the rules. If the adjudicator makes his recommendation simply on the basis that the applicant was 'wrongly' refused entry clearance as a child, that will carry little weight, as the Home Secretary's statement made prior to the (now abolished) overage concession indicated that discretion would not automatically be exercised in such cases.

4.2. Application for judicial review

Any case involving overage re-applicants where an application is made for judicial review should be referred to the Complex Advice Team for advice.

5. LEVEL OF CONSIDERATION AND DECISION

Initial consideration of all cases involving DNA evidence should begin at EO level and no decision to concede, refuse, or maintain an earlier decision should be taken without reference to HEO.