Children and DNA testing – Immigration Outlook

This year marks the 20th anniversary of a remarkable discovery which forever changed the legal profession.

It was in 1985 when Alec Jeffreys (now Sir Alec), a young professor of genetics in Leicester University, discovered DNA fingerprinting – the technique which allows unambiguous human identification as well as identification of relationship between people. Since then, DNA testing has emerged as a powerful tool in both civil and criminal justice systems. DNA testing can reveal not only whether two or more individuals are related but also determining the nature of this relationship. Today it is possible to identify people by a single hair, as well as obtain information about their gender and ethnic background, and within the next couple of years their age.

In non-criminal legal practice DNA testing is used primarily for immigration and child support cases. In 2004, more than 7,000 DNA tests were conducted for these purposes in the UK. Where no reliable documentary evidence is available, DNA testing can assist in determining varying degrees of relatedness between individuals concerned, as well as individual's ethnic background.

It was in a landmark immigration case Sarbah vs. Home Office 1985 (Ghana Immigration Case) when DNA testing was first used to prove the mother-son relationship between Christiana Sarbah and her son Andrew.

The case started in 1983 when Andrew, then 13, arrived in England after a long stay in Ghana with Christiana's estranged husband. Immigration officials held him at Heathrow Airport, claiming his passport was forged, or that a substitution had been made. Only after an intervention by a local MP was Andrew allowed to stay at his family's home in London.

Various tests to determine genetic characteristics showed that Christiana and Andrew were almost certainly related. However, it was impossible to determine whether Christiana was his mother or merely an aunt (Christiana has several sisters in Ghana). The photographic evidence and depositions were rejected at an immigration hearing, but deportation was delayed pending an appeal.

Around the same time an article in the Guardian reported the discovery of DNA fingerprinting by Prof. Alec Jeffreys and his team at the University of Leicester. After reading about this work, the legal team dealing with the case approached Prof. Jeffreys who agreed to take the case on. In order to prove that Christiana is the mother of Andrew, a DNA test was performed on blood samples from Christiana, Andrew, an unrelated individual, and Christiana's three undisputed children: David, Joyce, and Diana.

Using a recently discovered DNA probe a DNA fingerprint was produced which confirmed that Christiana was indeed the biological mother of Andrew and that David, Joyce and Diana are his siblings. Based on this evidence the case was dropped by the Home Office and massive press coverage ensued. The discovery of DNA fingerprinting had huge implication for non-criminal legal system and led to an overhaul of the UK's Immigration legislation. Current UK immigration legislation accepts results of DNA testing as the ultimate proof or relationship between a child and his/her relatives. 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.

Before January 1991, it was up to the applicant to decide whether or not to obtain DNA evidence in support of his/her application or appeal. In January 1991 a government scheme was introduced, which enables entry clearance officers (ECO) 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 UK sponsor.

DNA testing is routinely used in immigration cases to prove whether a child under 18 is a biological child of or, in some cases, is related to an individual with a leave to remain in the UK. Most of DNA tests for immigration reasons are parentage testing (paternity or maternity) but in some cases grand parentage or avuncular (this type of DNA test determines whether a child is a nephew or a niece of the sponsor) test is employed to prove an alleged relationship.

When the child is outside the UK a DNA test normally is arranged by an ECO. In such cases, DNA samples are taken from applicants at post overseas and sent to a UK-based laboratory together with the samples of the sponsor which is in most

cases is taken in the UK. If the child is already in the UK DNA testing could be conducted in a Home Office appointed laboratory or arranged privately or via solicitor.
The DNA testing report provides assessment as to the nature of relationship between the tested individuals and states the probability of this relationship.

According to the Home Office guidelines, in assessing DNA reports, the question to be address 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. If the probability of the claimed relationship is only twice as likely (or less) than any other relationship the case is usually reviewed as a whole. However, the Home Office admit 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. If relationship was the sole ground on which the application was refused but it was later established by means of DNA evidence, the Home Office usually concedes the case.

In cases where several children are to be tested the fact that some children are related to the claimant does not constitute the evidence in favour of other children who were not tested and the application with regards to the latter will be refused on the ground that there is not enough evidence to support the alleged relationship unless DNA testing results prove otherwise.

When DNA testing proves the alleged relationship, the Home Office usually concedes the application. However, in some cases the Home Office have specific guidelines as to their treatment, these guidelines relate to cases when the child is related to only one of the parents or is not related to them at all.

The immigration law treats cases when a child is related only to one of the parents differently depending whether the child is related to the mother or to the father.

Where the child is revealed to be the biological child of the father but not the mother, the Home Office usually seeks an explanation of this from the family on the following issues:

- whether the child has been brought up and lives with the natural mother or the natural father;
- whether the child's mother is also seeking entry or whether she qualifies for admission;
- whether the father had exercised sole responsibility for the child's upbringing;
- whether the father had a previous undisclosed marriage or is in a polygamous marriage.

Providing that the father is not in polygamous marriage, had exercised the sole responsibility for the child's upbringing and the child's mother is not seeking entry the application is usually conceded by the Home Office.

When the child is related only to the mother the situation is different. This is a very delicate case and is usually dealt with great sensitivity as the child may be illegitimate and the father may not be aware of this (even if he saw the DNA report). The impact of disclosure of adultery could be disastrous for the woman. If the child has been brought us as child of the family s/he is usually admitted.

If DNA testing results indicate that the child is unrelated to the claimant there may still be grounds for the Home Office to concede the application. If there is evidence that the child has been brought us as a member of the family s/he may be qualified for admission as de facto adopted child. In cases when the child is not a biological child of the parents but is related to them the child may qualify as a dependant of a relative other than a parent.

DNA technology has significantly improved from the times when it was discovered and now DNA testing became a gold standard for cases when relationship between people needs to be determined. Since 1985, thousands of children have been legally admitted to this country and hundreds of families reunited. This can be largely attributed to Sir Alec Jeffreys' chance discovery of DNA fingerprinting 20 years ago.

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