

OFFICE OF LEGAL AFFAIRS

## ADVISORY OPINION

# AO-2013-005

**SUBJECT:** Citizenship Attestation by Minors

**Date:** July 30, 2013

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### QUESTION PRESENTED

If a parent or legal guardian is unavailable to provide a citizenship attestation for a minor, may the minor attest to his or her own citizenship status under 45 C.F.R. § 1626.6(a)?<sup>1</sup>

### BRIEF ANSWER

The LSC Act, LSC appropriations riders, and Part 1626 of the LSC regulations do not limit recipients to obtaining citizenship attestations from adult applicants. Accordingly, when a parent or legal guardian is unavailable to provide a citizenship attestation for a minor, it is permissible for a recipient to obtain a citizenship attestation directly from the minor, so long as (i) it is reasonable to believe the minor has the ability to represent his or her citizenship status, and (ii) minors are not prohibited by state law from making such an attestation. If a recipient has reason to doubt a minor applicant's citizenship, the recipient should employ one of the methods of verification set forth in section 1626.6(b)

### BACKGROUND

Legal Services of North Florida (LSNF) has requested the opinion of the Office of Legal Affairs (OLA) concerning "the ability of minors to sign citizenship attestations when it is reasonable to believe they have the ability to accurately represent their citizenship status." The genesis of LSNF's inquiry is as follows.

LSNF represents children who have civil legal problems in the delinquency and dependency systems. LSNF's attorneys are often appointed by a court to represent minors, the

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<sup>1</sup> The definition of "minor" varies from state to state, but it is generally defined as a person who has not reached the age of majority, which is 18 years of age in most states. *See, e.g.*, Fla. Stat. Ann. § 39.01(12) (2013) ("Child" or "youth" means any unmarried person under the age of 18 years who has not been emancipated by order of the court."); Va. Code Ann. § 16.1-228 (2011) ("Minor" means a person less than 18 years of age."); and Wis. Admin. Code Trans § 102.21(1)(d) (1994) ("Minor" means a person less than 18 years of age.).

majority of whom are teenagers. Many of these children are estranged from their families and some are in foster care. In some instances, the parents of these minors may not have an interest in ensuring legal representation for their children and, thus, may not cooperate and execute a citizenship attestation on the minors' behalf. While LSNF has obtained birth certificates from state agencies, birth certificates are not always available, and, in some instances, the agencies have not been able to provide documentation in timely fashion, particularly when expedited legal action was required. In other instances, minors have been removed from their home and do not have access to birth certificates, baptismal certificates or other similar documents establishing their citizenship.

## ANALYSIS

Section 504(a)(11) of the LSC FY 1996 appropriation, which has been carried over in each subsequent year's appropriation, prohibits the Corporation from providing funding to any recipient that provides legal assistance to aliens ineligible for such assistance. *Omnibus Consolidated Rescissions and Appropriations Act of 1996*, Pub. L. No. 104-134, Title V, § 504(a)(11), 110 Stat. 1321, 1321-54 (1996).<sup>2</sup> This statutory prohibition has been implemented by Part 1626 of LSC's regulations, which also provides guidance to recipients regarding the eligibility and immigration status of persons seeking legal assistance. 45 C.F.R. Part 1626.

Section 1626.6, governing "Verification of citizenship," is particularly germane to the question presented here:

### **§ 1626.6 Verification of citizenship.**

(a) A recipient shall require all applicants for legal assistance who claim to be citizens to attest in writing in a standard form provided by the Corporation that they are citizens, unless the only service provided for a citizen is brief advice and consultation by telephone which does not include continuous representation.

(b) When a recipient has reason to doubt that an applicant is a citizen, the recipient shall require verification of citizenship. A recipient shall not consider factors such as a person's accent, limited English-speaking ability, appearance, race or national origin as a reason to doubt that the person is a citizen.

(1) If verification is required, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct and authentic of any of the following documents as evidence of citizenship:

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<sup>2</sup> The LSC FY 1996 appropriation restrictions are incorporated in the LSC FY 1998 appropriation, which has been incorporated in every subsequent LSC appropriation. *E.g., Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998*, Pub. L. 105-119, Title V, § 502(a)(2), 111 Stat. 2440, 2510 (1997), incorporated by reference in *Consolidated and Further Continuing Appropriations Act, 2013*, Pub. L. 113-6, Div. B, Title IV, 127 Stat. 198, 268 (2013). Congress has made some modifications to the 1996 restrictions that are not relevant to this opinion.

- (i) United States passport;
  - (ii) Birth certificate;
  - (iii) Naturalization certificate;
  - (iv) United States Citizenship Identification Card (INS Form I-197 or I-197); or
  - (v) Baptismal certificate showing place of birth within two months after birth.
- (2) A recipient may also accept any other authoritative document such as a document issued by INS, by a court or by another governmental agency, that provides evidence of citizenship.
- (3) If a person is unable to produce any of the above documents, the person may submit a notarized statement signed by a third party, who shall not be an employee of the recipient and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

45 C.F.R. § 1626.6.

As quoted above, with limited exceptions, “[a] recipient shall require *all* applicants for legal assistance who claim to be citizens to attest in writing in a standard form provided by the Corporation that they are citizens . . . .” 45 C.F.R. § 1626.6(a) (emphasis added). The regulation does not address its application to minors. The preamble to the final rule, however, notes that parents or guardians *may* attest to citizenship on behalf of minors:

[T]he Corporation has long recognized that legal guardians often must act for clients who are incompetent. For example, Office of [Legal Affairs] opinions have approved such guardians acting on behalf of clients seeking assistance as eligible clients under the Corporation's poverty guidelines in 45 CFR Part 1611. Although not expressly provided for in the rule, for the purposes of [Part 1626], an attestation of citizenship for applicants who are children . . . may be done, for example, by a parent, legal guardian, guardian *ad litem*, or other legal representative of the child . . . . Such attestation may not be done, however, by the recipient, even though the recipient may be the applicant's guardian for other purposes.

62 Fed. Reg. 19409, 19412 (April 21, 1997).

Neither the regulation nor the preamble expressly addresses situations in which a parent or guardian is *unavailable* to provide the attestation. Furthermore, nothing in the LSC Act, the LSC appropriations restrictions, or the LSC regulations expressly or even indirectly precludes a minor from providing an attestation. Accordingly, when a parent or legal guardian is unavailable

to provide a citizenship attestation for a minor, it is permissible for a recipient to obtain a citizenship attestation directly from the minor so long as (i) it is reasonable to believe the minor has the ability to represent his or her citizenship status, and (ii) minors are not prohibited by state law from making such an attestation.

This conclusion is supported not only by the absence of any prohibition in the LSC Act, appropriations restrictions, and LSC regulations, but also by examples of other circumstances in which LSC or government agencies accept the representations or attestations of minors. For example, when making financial eligibility determinations, a recipient of LSC grants is required to make a “reasonable inquiry” into the income, income prospects, and assets of an applicant. *See* 45 C.F.R. § 1611.7(a)(1). In External Opinion No. EX-2008-1003 (September 8, 2008), OLA concluded that a recipient could accept financial information from minors when circumstances indicated it was reasonable to do so:

The reasonableness of the inquiry made will depend on all of the surrounding circumstances, including but not limited to the minor’s age and ability to understand and adequately respond to the intake questions asked; the minor client’s apparent familiarity with the income and assets of his or her household members; the nature, logic, and consistency of the minor client’s responses to a recipient’s intake questions; and the minor client’s mannerisms and disposition for purposes of making a credibility determination.

*Id.* at 7. The indicia of reasonableness cited in External Opinion No. EX-2008-1003 – the minor’s age and ability to understand and respond to questions; the minor’s familiarity with the facts related to the question at issue; the nature, logic and consistency of the minor’s response to questions; and the minor’s mannerisms and disposition in responding to questions – are also applicable in determining the reasonableness of a minor’s representation as to citizenship.

State governments also routinely accept the attestation of minors in connection with applications for driver’s licenses and marriage licenses. In order to obtain a driver’s license or marriage license, the applicant must generally sign an attestation or certification statement affirming that the information provided in the application is true and accurate.<sup>3</sup> Likewise, it is

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<sup>3</sup> Most, if not all, states require any applicant, regardless of age, to sign or certify as to the truth and accuracy of the representations made in an application for a driver’s license or marriage license. *See, e.g.*, Md. Code Ann., Transp. § 16-106 (2010) (applicants required to certify the truth and accuracy of the contents contained in the driver’s license application); Haw. Rev. Stat. Ann. § 572-.6 (1997) (marriage license application must be accompanied by a sworn statement affirming accuracy of personal information contained therein).

Some states require parental or guardian consent to support a minor’s application for a driver’s license or marriage application. *See, e.g.*, Minn. Stat. Ann. § 171.04 (1)(ii) (2012)(consent required in support of driver’s license application); Fla. Stat. Ann. § 741.04 (1) (2012) (consent required in support of marriage license application). A consent requirement, however, does not mean that minors cannot attest to the truth and accuracy of information in the relevant applications, only that parental or guardian consent is an additional prerequisite for such applications.

permissible for a recipient to obtain a citizenship attestation directly from a minor, unless the applicable state prohibits attestations by minors.

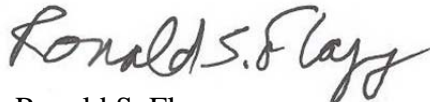
Finally, regardless of whether an adult or minor attests to citizenship, if “a recipient has reason to doubt that [a minor] applicant is a citizen, the recipient shall require verification of citizenship” using the measures prescribed in 45 C.F.R. § 1626.6(b).

#### CONCLUSION

Because the LSC Act, LSC appropriations restrictions, and Part 1626 do not limit recipients to obtaining citizenship attestations from adult applicants, it is, unless otherwise prohibited by state law, permissible for a recipient to obtain citizenship attestations from a minor when the minor’s parent or legal guardian is unavailable to provide the citizenship attestation for the minor and it is reasonable to believe the minor has the ability to represent his or her citizenship status accurately. Regardless of whether an adult or the minor attests to the citizenship of a minor applicant, if a recipient has reason to doubt the minor’s citizenship, the recipient should employ one of the methods of verification set forth in section 1626.6(b).



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