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16  
17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION (LOS ANGELES)**  
20

21 ANDREW MASON DVASH-  
BANKS AND E.J. D.-B.,

22 Plaintiffs,  
23

24 v.

25 THE UNITED STATES  
DEPARTMENT OF STATE,  
and THE HONORABLE  
26 MICHAEL R. POMPEO,  
Secretary of State,  
27

28 Defendants.

Case No. 2:18-cv-00523-JFW-(JCx)

**EXCERPTS FROM THE  
DEPOSITION OF LARILYN  
REFFETT IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Judge: Hon. John F. Walter  
Hearing Date: February 4, 2019  
Courtroom: 16

1 Pursuant to Part 4(b) of the Court's Scheduling and Case Management  
2 Order (DKT 52), entered on August 21, 2018, attached hereto are excerpts from  
3 the deposition of Larilyn Reffett submitted in support of Plaintiffs' Motion for  
4 Partial Summary Judgment.

5 Dated: January 7, 2019

Respectfully submitted,

6  
7 By: /s/ Alexa M. Lawson-Remer  
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7 Q. So is it correct then that the  
8 policies of the United States State Department are  
9 one and the same with the policies of the Toronto  
10 Consulate in the adjudication of applications for  
11 U.S. passports?

12 A. The adjudications here in Toronto  
13 are done solely based on the guidance and the  
14 references that we are provided by the Department  
15 of State.

16 Q. Is there any Toronto  
17 Consulate-specific guidance concerning  
18 adjudications of U.S. passports?

19 A. No.

20 Q. What about Canada-specific?

21 A. No.

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21 Q. And is the purpose of a Consular  
22 Report of Birth Abroad to determine whether someone  
23 is a U.S. citizen from birth?

24 A. Correct.

**Pages 60-61**

18 Q. So the Toronto Consulate applies  
19 the Foreign Affairs Manual in adjudicating Consular  
20 Reports for Birth Abroad?

21 A. We consult the Foreign Affairs  
22 Manual and follow all of the relevant guidance that  
23 we are required to follow.

24 Q. Is there any way in which you are  
25 aware that the Toronto Consulate does not follow

1 the Foreign Affairs Manual in adjudicating  
2 applications for Consular Reports of Birth Abroad?

3 A. No.

4 Q. And am I correct that the same is  
5 true for U.S. passport applications?

6 A. Correct.

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6 Q. And is it your understanding that  
7 E█████ D█████-B█████'s applications for U.S. passport  
8 and Consular Report of Birth Abroad were denied?  
9 A. Yes.

**Pages 67-69**

14 Q. And from the period of when the  
15 applications were initiated through March 2nd,  
16 2017, when this letter was dated, were you  
17 personally involved at all in these applications or  
18 their adjudication?

19 A. The day of the interview, Frankie  
20 asked me about -- she told me that she was going to  
21 request DNA testing. She asked me how she went  
22 about doing that. I explained to her that she just  
23 needs to ask a local staff to draft the letter.  
24 There is standard language that explains how to  
25 obtain a DNA test that is -- that meets the

1 requirements of the Department of State.  
2 She asked for that letter and then  
3 presented it to the family, so I was aware at that  
4 point that she was requesting the DNA evidence. At  
5 that point, a case will go into pending status.  
6 Cases generally are allowed to remain in that  
7 status for up to 90 days without any further  
8 action. At the 90-day mark, we will review again  
9 to see whether or not we have received the  
10 information we have requested and try and proceed  
11 with the case.

12 Q. Ms. Day spoke to you on the date  
13 when the Dvash-Banks family came in about  
14 requesting DNA testing; is that correct?

15 A. Yes, she asked me to verify how  
16 the procedure works, what documentation needs to  
17 happen, because we aren't in charge of the DNA  
18 program as the adjudicating officers, so she wanted  
19 to verify that she was getting the right letter,  
20 giving them the right information about how to  
21 proceed with that testing.

22 Q. Did Ms. Day share with you the

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23 facts surrounding these applications for E [REDACTED]?  
24 A. She told me that she had a case  
25 that involved artificial reproductive technology.

1 She said that it was not clear from the  
2 documentation who was biologically related to who  
3 in the case and she was requesting the DNA in order  
4 to establish that.

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7 Q. I would like to focus on your  
8 conversations with Ms. Day about these applications  
9 for the next several questions.  
10 When Ms. Day first spoke with you about  
11 E [REDACTED]'s applications, had she already decided to  
12 give them pending status?  
13 A. When she came to me, she explained  
14 to me that the documentation did not establish the  
15 biological relationship, so she was going to  
16 request the DNA testing and she asked me about the  
17 proper procedure for doing that.

**Page 77**

14 Q. Is it your understanding that when  
15 Ms. Day signed this letter on March 2nd, 2017, the  
16 adjudication was final?  
17 A. Yes, that is my understanding.

**Page 78**

9 Q. So sitting here today, what is  
10 your understanding of why Frankie Terri Day denied  
11 E [REDACTED]'s applications for a U.S. passport and  
12 Consular Report of Birth Abroad?  
13 A. My understanding is that the  
14 applicants did not establish the biological  
15 relationship between the American citizen parent  
16 and the child, which is required by the Immigration  
17 and Nationality Act.  
18 Q. And are you aware of any other  
19 reason why E [REDACTED]'s applications were denied?  
20 A. No.

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8 Q. Do you know if anyone was involved  
9 in processing the applications other than Ms. Day?  
10 A. I do know that the same way that I  
11 provided guidance on how to request a DNA test,  
12 that my colleague Margaret Ramsay also provided the  
13 relevant FAM citations, the Foreign Affairs Manual,  
14 so that Frankie could consult if she wanted to, if  
15 she needed to, the appropriate sections of the  
16 Foreign Affairs Manual.

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15 Q. Is it your understanding that Ms.  
16 Day was the person who granted A [REDACTED]'s application  
17 for a U.S. passport?  
18 A. It is my understanding that she  
19 approved that application.  
20 Q. And is the same true for A [REDACTED]'s  
21 application for a Consular Report of Birth Abroad?  
22 A. Yes.

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6 Q. Does Ms. Day's letter dated March  
7 2nd, 2017, reflect a final adjudication of E [REDACTED]'s  
8 applications for a U.S. passport and Consular  
9 Report of Birth Abroad?  
10 A. As far as the applications that  
11 were submitted here in Toronto, that letter  
12 absolutely is a final determination. In the  
13 second-to-last paragraph:  
14 "[...] therefore the  
15 applications are denied."  
16 That is the termination of that case  
17 from that point forward.  
18 Q. So how would you describe the  
19 status of that case for the Toronto Consulate  
20 today?  
21 A. The case was denied and it is  
22 closed.

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**Pages 121-122**

22 Q. What is your understanding of in  
23 what cases the Immigration and Nationality Act  
24 requires a blood relationship between a child born  
25 outside of the United States and a U.S. citizen?

1 A. If the U.S. citizen is  
2 transmitting citizenship, there must be a  
3 biological relationship between the child and the  
4 parent, unless in the case of a female parent, if  
5 you are the gestational parent, that also meets the  
6 requirements. There must be a biological or  
7 gestational relationship.

**Pages 124-125**

9 Q. And you understand the Immigration  
10 and Nationality Act to require that even if the  
11 child's legal parents are married to each other?

12 A. That is not my understanding that  
13 that is the guidance from the Department of State.  
14 The Department of State, as referenced on our  
15 website, as in all of the information that is  
16 publicly available, requires that there be a  
17 biological relationship between the U.S. citizen  
18 parent and a child who is not born in the United  
19 States.

20 Q. Regardless of whether the parents  
21 are married?

22 A. Correct.

23 Q. And it is your understanding that  
24 that is what the INA requires?

25 A. That is the Department's guidance

1 as to the Immigration and Nationality Act. We must  
2 establish a biological relationship between the  
3 U.S. citizen parent and the child.

**Pages 156-157**

20 Q. And is there an exception for a  
21 woman who is a gestational parent without a  
22 biological relationship to the child?

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23 A. Well, when I say a "biological,"  
24 because we have been talking about fathers and, you  
25 know, this particular, the row that you have

1 highlighted "Amcit Father out of Wedlock," we  
2 weren't discussing mothers.  
3 For mothers, the relationship has to be  
4 either biological or gestational.

**Page 183**

4 Q. Are you aware of any changes to  
5 the biological relationship to a U.S. citizen  
6 parent requirement that have changed during your  
7 tenure at the Toronto Consulate?

8 A. I don't know the exact dates of  
9 changes as they have come and gone. I do -- we  
10 have touched on this issue earlier, but we have  
11 talked about the fact that the biological  
12 relationship does now include a gestational mother  
13 role, for example.  
14 Being a gestational mother does in fact  
15 meet the biological -- does in fact qualify as a  
16 biological relationship. That has been a change,  
17 but when it happened, I honestly don't know. It is  
18 not something I keep track of.