UNDER SECRETARY OF STATE

FOR MANAGEMENT

WASHINGTON

SEP 17 2012

The Honorable Carolyn N. Lerner
Special Counsel
Office of the Special Counsel
1730 M. Street, N.W., Suite 300
Washington, DC 20036-4505

Re: OSC File No. DI-12-2963

Dear Ms. Lerner:

This letter responds to the U.S. Office of Special Counsel's July 18 letter to Secretary Clinton referring for investigation whistleblower disclosures of Passport Specialist Joel Warne. According to your letter, Mr. Warne has alleged that management at the Western Passport Center (WPC), part of the Passport Services Directorate of the Department's Bureau of Consular Affairs (CA/PPT), improperly directed employees to suspend passport applications of certain individuals who are in fact eligible for a U.S. passport. Specifically, Mr. Warne alleges that WPC Passport Specialists were directed to suspend, and in some cases deny, passport applications of applicants who provided sufficient documentation to establish that they had acquired U.S. citizenship sometime after birth under the Child Citizenship Act of 2000 (CCA), 8 U.S.C. § 1431, if there was any indication that the applicant may actually have acquired U.S. citizenship at birth.

OSC requested that the Department investigate these allegations and provide you with a report of its findings. The Secretary has delegated her authority to me as the Under Secretary for Management to act in this matter pursuant to Delegation of Authority No. 198. Enclosed please find the Department's Report of Investigation submitted in accordance with 5 U.S.C. § 1213(d). The investigation revealed no violation of law, rule, or regulation, nor any evidence of gross mismanagement or abuse of authority.

Although Mr. Warne is correct that WPC management has directed its Passport Specialists to suspend applications that attempt to document acquisition of citizenship under the CCA where the evidence presented in the application suggests that acquisition may have occurred at birth, the Department's investigation found that this practice was in accordance with guidance from

CA/PPT headquarters in Washington. The investigation did not find this guidance to be in violation of any law, regulation, or policy. This guidance was determined to be entirely consistent with CA/PPT's mission. Further, the investigation found no evidence to substantiate Mr. Warne's allegations that WPC management directed him or any other Passport Specialists to deny these applications for a failure to respond to requests for additional information.

Thank you for bringing this matter to our attention. If you have any questions, please do not hesitate to contact us.

Sincerely,

Patrick F. Kennedy

Enclosure:
As stated

U.S. DEPARTMENT OF STATE, BUREAU OF CONSULAR AFFAIRS, PASSPORT SERVICES DIRECTORATE, DIVISION OF LEGAL AFFAIRS INVESTIGATIVE SUMMARY CONCERNING THE OFFICE OF THE SPECIAL COUNSEL'S JULY 18, 2012 REFERRAL FOR INVESTIGATION (OSC FILE NO. DI-12-2963) TO THE U.S. DEPARTMENT OF STATE

I. Predicate for the Investigation

This investigation was initiated at the request of the Office of Special Counsel (OSC) based on the whistleblower disclosures of Mr. Joel Warne, a passport specialist employed at the Western Passport Center (WPC), part of the Passport Services Directorate of the Department's Bureau of Consular Affairs (CA/PPT). According to the OSC referral, Mr. Warne has alleged that WPC management has directed him and other passport specialists to:

- Suspend any passport application made pursuant to the Child Citizenship Act of 2000 (CCA), 8 U.S.C. § 1431, if there was any indication that the applicant had acquired citizenship at birth; and
- Require that these applicants submit documents showing that they did indeed acquire citizenship at birth; and
- Deny these applications in the event that the requested documentation of citizenship at birth was not submitted within 90 days, resulting in a forfeiture of the applicant's application fees.

OSC referred the above disclosures to the Secretary of State after concluding that there was a substantial likelihood that the information provided by Mr. Warne disclosed a violation of law, rule, or regulation, gross mismanagement, and/or an abuse of authority. As set forth below, the investigation did not substantiate Mr. Warne's allegation that suspension of these CCA applications is improper or an abuse of authority, and did not find that any violation, gross mismanagement, or abuse of authority occurred.

II. Relevant Law

Congress conferred the authority to grant, issue, and verify passports on the Secretary of State, 22 U.S.C. § 211a, and the President designated and empowered the Secretary to exercise the authority to prescribe rules governing the granting, issuing, and verifying of passports. Executive Order No. 11295, 31 Fed. Reg. 10603 (Aug. 5, 1966). Pursuant to 22 U.S.C. § 212, a U.S. passport may be issued only to persons "owing allegiance" to the United States. Such persons include U.S. citizens and other U.S. nationals.[1] 22 C.F.R. § 51.2(a). A U.S. passport issued to a U.S. citizen has, during the period of its validity, the same force and effect as proof of U.S. citizenship as do certificates of naturalization or certificates of citizenship. 22 U.S.C. § 2705.

[1] All U.S. citizens are also U.S. nationals. 8 U.S.C. § 1101(a)(22). Persons born in American Samoa and Swains Island who do not derive U.S. citizenship from another source, such as transmission from a U.S. citizen parent or naturalization, are U.S. nationals but not U.S. citizens. Id. §§ 1101(a)(29), 1408.

A passport applicant bears the burden of proving that he or she is a U.S. citizen or non-citizen national of the United States, and must provide documentary evidence of nationality to support his or her application. 22 C.F.R. §§ 51.40, 51.41. The Department has discretion to require an applicant to provide any evidence it deems necessary to establish that the person is a U.S. citizen or non-citizen national. 22 C.F.R. § 51.45. Persons born in the United States and subject to U.S. jurisdiction are U.S. citizens from the time of birth under the Fourteenth Amendment of the U.S. Constitution. *See also* Immigration and Nationality Act (INA) § 301(a), 8 U.S.C. § 1401(a). Persons born outside the United States can only acquire U.S. citizenship as provided for by Congress. Passport applicants born outside the United States must provide sufficient documentary evidence to establish that they meet all the applicable statutory requirements for "acquisition of U.S. citizenship or non-citizen nationality under the provision of law or treaty under which the person is claiming U.S. citizenship or non-citizen nationality." 22 C.F.R. § 51.43.

There are two common methods in which applicants born outside the United States might acquire U.S. citizenship by automatic operation of law, rather than by their own affirmative action. Acquisition under either of these methods is sometimes referred to as "derivative citizenship." The first is acquisition at birth under the scheme set out by Congress in subsections (c)-(e) and (g) of INA § 301, 8 U.S.C. § 1401, and INA § 309, 8 U.S.C. § 1409, for children to derive U.S. nationality from a U.S. national parent or parents at the time of birth. The second is acquisition later in life, which prior to 2001, required naturalization of one or both alien parent(s). The Child Citizenship Act of 2000 (CCA), effective February 27, 2001, allows certain foreign-born, biological and adopted children of American citizens to acquire U.S. citizenship automatically. Children who acquire under the CCA do not acquire U.S. citizenship at birth, but acquire citizenship by operation of law upon or following entry to the United States as lawful permanent residents. Under the CCA, a person automatically acquires U.S. citizenship upon meeting the following requirements:

1. At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
2. The child is under the age of eighteen years.
3. The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

INA § 320(a), 8 U.S.C. § 1431(a).[2]

United States citizenship confers significant benefits both on the U.S. citizen and on his or her family, and some of these benefits turn on the date on which citizenship is acquired. The date of citizenship acquisition may, for example, determine whether a citizen's children are also U.S. citizens.

[2] The CCA also provides for automatic acquisition of citizenship by a child adopted by a U.S. citizen parent if the child satisfies the requirements applicable to adopted children under INA § 101(b)(1). INA § 320(b), 8 U.S.C. § 1431(b).

III. The Investigation

A. Conduct of the Investigation

Two representatives from the Passport Services Directorate (one from the Office of Legal Affairs, PPT/S/L, and one from the Office of Adjudication PPT/S/A) and one representative from the Department's Office of the Legal Adviser interviewed Mr. Warne and six other current or former employees at WPC: Nancy "Sam" Finn, the Director of WPC; John Caveness, the Assistant Director of WPC; Sarah Nale, a Supervisory Passport Specialist and Mr. Warne's supervisor in 2011; Amy Gonzalez, a Supervisory Passport Specialist and Mr. Warne's current supervisor; Jason Roach, a former Adjudication Manager for WPC (currently an Adjudication Manager at the Honolulu Passport Agency) and Marti Rice, the Adjudication Manager for WPC.[3] Two individuals at the Passport Services Directorate headquarters were also interviewed: Florence Fultz, the Managing Director for Passport Services, and Don Simpkins, the Director of the Office of Adjudication.

Interviewees were chosen based on their potential knowledge of and/or involvement with the issue, or if they were in Mr. Warne's chain of command either currently or during the relevant time period. All interviewees were asked to provide any relevant e-mails or other documents they had related to the allegation that WPC was improperly suspending passport applications where an applicant claimed citizenship through the CCA. The documents obtained included email correspondence within WPC and between WPC and PPT/S/A; the WPC customer service manual; documents related to a union grievance filed in 2010; and guidance and memos from Passport Services regarding the adjudication of passport applications.

The investigators reviewed and considered the information provided by the interviewees, as well as documentation obtained independently, to determine whether Mr. Warne's allegations regarding the actions of WPC management were substantiated and whether those actions were inconsistent with any relevant statutes, regulations, rules, or policies, or otherwise constituted gross mismanagement or an abuse of authority.

B. Summary of Relevant Information Obtained Regarding WPC Practice

1. Interview with Whistleblower

During the interview with Mr. Warne, he stated that his concern was with WPC's policies on the adjudication of applications claiming citizenship under the CCA ("CCA applications") since the agency's opening in 2009.[4] Mr. Warne believes that WPC has a higher than average number of CCA cases given its location near the border. According to Mr. Warne, WPC passport adjudicators were directed to suspend CCA applications if there was any indication that

[3] The investigators also attempted to interview Luis Camacho, a Passport Specialist at WPC, as Mr. Warne suggested that Mr. Camacho may have knowledge about the issue. The investigators reached out to Mr. Camacho multiple times via voicemail and e-mail but did not receive a response.

[4] WPC opened on September 8, 2009.

the applicant may have acquired citizenship at an earlier date, even if the applicant submitted sufficient evidence to establish a claim to U.S. citizenship under the CCA.

Mr. Warne stated that WPC management directed these suspensions even if an applicant had already been issued a permanent resident card (LPR card). According to Mr. Warne, the fact that an applicant had an LPR card meant that U.S. Citizenship and Immigration Services (USCIS) had already made the determination that the applicant had not previously acquired U.S. citizenship, and therefore the Department was unnecessarily duplicating the efforts of another federal agency by suspending these cases to seek possible evidence of earlier acquisition. Mr. Warne stated that this practice was inconsistent with both Department regulations and with the Department's Foreign Affairs Manual (FAM). Specifically, Mr. Warne asserted that, under 22 C.F.R. § 51.43(a), a passport applicant is given the authority to determine under which provision of law he or she wishes to state a claim to U.S. citizenship. Moreover, according to Mr. Warne, WPC's practice was contrary to the section of the FAM that states an LPR card is evidence that USCIS has determined that a child did not acquire derivatively.[5]

Mr. Warne explained that the primary trigger that led to suspense of a CCA application was an applicant's indication on a DS-11 Application for a U.S. Passport that both of his or her parents were U.S. citizens. In those cases, the application would be placed in suspense, thereby putting the adjudication of the application on hold. The adjudicator would then send an Information Request Letter (IRL) requesting the applicant to provide additional evidence within 90 days to support an earlier claim to U.S. citizenship. Applicant responses would be sent to the original adjudicator for review and possible issuance, but applications that received no response after 90 days were reviewed by the customer service office. Mr. Warne stated that generally in these "no response" cases the customer service office would issue a passport, but he was concerned that less experienced adjudicators might deny the application based on the non-response.

Mr. Warne estimated that he personally reviewed approximately 90 "no response" CCA applications involving such circumstances while he completed a rotation in the customer service office. He indicated that in these cases, where the applicant had provided sufficient documentation to establish a claim to citizenship at least under the CCA, if not earlier, it was his practice to issue the passport. He further stated that he was not personally aware of any case in which an applicant who had sufficient documentation to establish a claim to citizenship at least under the CCA, if not earlier, had been denied a passport based on a failure to respond to an IRL for additional information about possible earlier acquisition.

Mr. Warne indicated that the concerns of WPC passport specialists about WPC's practice were first formally brought to the attention of WPC management on July 23, 2010, in the form of a union grievance. Additional information about this grievance is provided below in Section II(D)(1).

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[5] He did not provide a particular FAM citation, but based on this statement, we believe Mr. Warne was referring to 7 FAM 1159.1(f)(5)(a), which lists a "Permanent Resident Card/Alien Registration Card (LPR Card)" as "Evidence of Permanent Residence Status."

2. Interviews with Other WPC Employees

All six WPC employees who were interviewed confirmed that Mr. Warne accurately described WPC's practice of suspending CCA applications when there was an indication that the individual may have acquired citizenship at an earlier date. They noted that guidance to follow these procedures came from nationwide training classes, national standards, guidance from the Office of Adjudication, and the Foreign Affairs Manual.[6]

Interviewees further explained the process of suspending these applications. Suspension only occurred if there was an indication of earlier acquisition of citizenship (most commonly, this meant that an applicant indicated on a DS-11 that both of his or her parents were U.S. citizens but only provided proof of one parent's acquisition of citizenship). If there were no indication, the application would be adjudicated under the CCA. If there were an indication, an IRL would be sent. Applicant responses would be sent to the original adjudicator, and "no response" cases would be reviewed by a senior passport specialist, with at least two years of experience, in the customer service office. Often the specialist would again reach out to the applicant by calling him or her to try to obtain additional information.

All six interviewees indicated that, as a matter of WPC policy, WPC Director Finn reviewed and signed most, if not all, agency denial letters before they went out. None of the six WPC employees interviewed, including Ms. Finn, was aware of any instance where an application was denied on the basis of a failure to respond to a request for additional evidence where the evidence already provided with the application was sufficient to establish acquisition of U.S. citizenship.

The interviewees noted that this suspense practice has consistently been in place since WPC opened in 2009. Ms. Finn noted that she considered the policy justified as she has seen many instances where USCIS improperly issued an LPR card to an individual who was actually a U.S. citizen, because at the time the individual was unable to provide sufficient U.S. citizenship evidence and so was told to apply for a visa instead. Mr. Caveness believed that there had been cases where WPC was able to document earlier acquisition of citizenship for some CCA applicants based on additional evidence presented by the applicant in response to an IRL.

D. Summary of Relevant Information Obtained on Passport Services' Guidance

As information obtained in the course of the investigation indicated that WPC's practice on adjudicating these CCA cases was guided by advice from Passport Services' headquarters, investigators also conducted interviews and obtained information on how Passport Services' approach to this issue developed.

Much of the headquarters guidance on this issue came from the Passport Services, Office of Adjudication (PPT/S/A). PPT/S/A was established in March 2010 to develop, update, and

[6] This guidance included memos from CA/PPT to passport agencies since the enactment of the CCA; email queries and responses from the Office of Adjudication; sections of the Foreign Affairs Manual, particularly7 FAM 1100; citizenship worksheets for passport specialists to fill out when adjudicating a passport application; and a manual written for the Customer Service office at WPC.

oversee the implementation of passport policy. As part of its mission, PPT/S/A also responds to queries from passport agency management regarding the adjudication of passport applications and serves as a general purpose liaison for field agencies with headquarters offices.

1. History of Development of CA/PPT Guidance

CA/PPT's longstanding policy has been to document the passport applicant's earliest claim to citizenship.[7] Over time, this policy has been refined and articulated to the field on various occasions. In 2010, for example, passport specialists were instructed to notate the earliest claim to citizenship on the passport application itself. At WPC, on July 21, 2010, passport specialists were informed by local management of a new notational method for derivative citizenship cases. The new method required employees to notate on a "derivative citizenship worksheet" both the law under which the adjudicator believed the applicant had derived citizenship and any other laws the applicant may have had a potential claim under, if sufficient evidence had been provided. The goal was to ensure that specialists were reviewing the applicant's earliest possible claim, and therefore the correct claim, to U.S. citizenship. As mentioned by Mr. Warne during his interview, this guidance led a National Federation of Federal Employees (NFFE) Local 1998 steward[8] to file a grievance on behalf of employees at WPC. The union grievance did not question the appropriateness of the policy but simply urged management to recognize this as a task that had not been factored into the time used under existing production standards to adjudicate CCA applications. While the grievance was ultimately found to be without merit, Passport Services management recognized the need to ensure there were nationwide standardized practices for noting the basis for acquisition in derivative citizenship cases. On April 20, 2012, an updated citizenship worksheet was released to the field with reiterative instructions to document the earliest possible claim to U.S. citizenship for derivative cases.

Between the time of the initial grievance from WPC and the April 2012 memo, PPT/S/A responded to WPC inquiries on the topic of derivative citizenship. On May 19, 2011, WPC submitted inquiries on derivative citizenship via email. PPT/S/A reiterated previous guidance by stating that the earliest possible claim to citizenship should be pursued based on the evidence presented and that, if the applicant cannot provide sufficient documentation for an earlier claim, then the application could be adjudicated under the CCA. Other passport agencies were also interested in this issue. On January 12, 2012, PPT/S/A received an inquiry from another passport agency, the Houston Passport Agency, asking PPT/S/A whether it was necessary to investigate possible acquisition of citizenship at birth (an "at birth claim") where an applicant submitted the necessary evidence to document his or her acquisition of citizenship under the CCA. On January 13, 2012, PPT/S/A responded that it was interested in ensuring that the date of acquisition notated on a passport application was accurate when documenting derivative citizenship claims. However, PPT/S/A also confirmed that adjudicators should only try to document an earlier claim if there was evidence that an earlier claim existed.

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[7] As early as February 23, 2001, in anticipation of the Child Citizenship Act of 2000, which was to become effective on February 27, 2001, Passport Services provided guidance to all Passport Services employees stating that the CCA affected those U.S. citizens who "would not otherwise acquire under any other section of the [Immigration and Nationality Act]."

[8] NFFE Local 1998 is a federal employees union that represents bargaining unit members of the Passport Services Directorate.

After the release of the April 2012 worksheet, PPT/S/A had further queries from WPC on derivative citizenship. On April 24, 2012, PPT/S/A informed the agency that an application could be adjudicated under the CCA if the applicant failed or refused to provide further documentation for a potential "at birth" claim after an initial IRL was sent. On April 30, 2012, PPT/S/A responded to an e-mail from WPC and clarified that adjudicators should identify the earliest possible claim to U.S. citizenship based on the evidence presented at the time of application. Finally, on June 6, 2012, PPT/S/A relayed to WPC that statements made by the applicant on the application would be considered "evidence presented" which could require further investigation of a possible "at birth" claim.

2. Interviews with Passport Services Management

As part of its investigation, the Department interviewed two individuals at the Passport Services Directorate headquarters: Florence Fultz, the Managing Director for Passport Issuance, and Don Simpkins, the Director of PPT/S/A. Ms. Fultz and Mr. Simpkins explained that the rationale behind Passport Services' guidance that adjudicators should attempt to document the earliest citizenship acquisition date for an applicant is that the earliest date of acquisition is the correct date of acquisition. In other words, the main purpose for advocating this practice is to ensure that the State Department is properly adjudicating citizenship and a passport application by considering all available evidence.

They also indicated that it benefits the applicant to have his or her earliest possible date of citizenship documented in the passport application process because various state and federal benefits are based on the date of citizenship acquisition. Other federal and state entities often rely upon passport records to determine eligibility for these benefits, relying on the acquisition date noted by the adjudicator on the passport application. In some instances, federal agencies contact the Department for information on our determination of how and/or when a given individual acquired U.S. citizenship. In other instances the agencies ask a would-be beneficiary to provide that information themselves, and the beneficiary then contacts the Department for records to support his or her claim. As an example, Mr. Simpkins noted that passport applicants have previously requested their passport records to use as documentary evidence of their date of acquisition of citizenship when applying for student loans.

They also explained that Passport Services has created nationwide training courses and guidelines to ensure that such cases are processed in the same manner. Ms. Fultz expressed some surprise at the assertion that applications might be suspended solely on the basis of an applicant's indication that both of his or her parents were U.S. citizens; however she did not object to that practice. Ms. Fultz and Mr. Simpkins emphasized that the general guidance to all passport agencies has been that if there is sufficient documentation to issue a passport after attempts have been made to acquire additional information, the agency should issue the passport.

IV. Analysis

A. Allegation Regarding Improper Suspense of Passport Applications

1. WPC management did direct the suspension of applications, consistent with CA/PPT Headquarters' guidance

The evidence acquired in the course of this investigation substantiated Mr. Warne's allegation that WPC management directed passport specialists, including Mr. Warne, to suspend CCA applications where the evidence presented, including evidence found on the face of the application, indicated that the applicant might actually have an earlier ("at birth") claim to citizenship. According to the interviewees and the documents reviewed as part of this investigation, this kind of suspension arose generally only in the unusual occurrence when an applicant indicated on his or her passport application that both of his or her parents were U.S. citizens, but only provided evidence of one parent naturalizing subsequent to the applicant's birth.[9]

The investigation also found that this agency practice was consistent with guidance provided by CA/PPT headquarters in Washington, DC. PPT/S/A's views on the issue were memorialized in nationwide guidance on April 20, 2012, when a memorandum from CA/PPT's Managing Directors was sent to all Regional Directors, Directors, and Assistant Directors to alert them to the changes and additions that had been made to the citizenship worksheet that adjudicators must use when adjudicating derivative citizenship cases, including both "at birth" and CCA cases. As stated in the April 20, 2012 memo, the revised citizenship worksheet now "require[s] that specialists document, based upon the evidence presented, the strongest claim to citizenship or nationality. The strongest claim to citizenship or nationality is the earliest date of acquisition."

2. Such suspensions were not improper

The investigation did not substantiate Mr. Warne's allegation that the policy and practice of suspending these CCA applications is improper. According to the OSC referral letter, Mr. Warne alleges that suspension of these CCA applications is improper because

> (1) "Passport specialists are effectively being asked to make citizenship determinations, a function outside the normal duties and responsibilities of their positions,"
>
> (2) an applicant has "authority under [22 C.F.R.] § 51.43 to choose the provision of law under which he or she wishes to apply for a passport," and
>
> 3) the additional review of these applications to determine whether the applicant may have acquired citizenship at birth rather than under the CCA is a duplication of effort, possibly amounting to a bureaucratic redundancy contrary to the intent of 31 U.S.C. § 9701(b)(2) in cases where the applicant has "an immigration visa[] and/or permanent resident card[], which are not issued to individuals who acquire citizenship at birth."

[9] This could trigger suspense under WPC's practice because it raised the possibility that the other parent, for whom proof of citizenship had not been provided, was a U.S. citizen at the time of the applicant's birth and that the applicant might therefore have acquired U.S. citizenship at birth.

Mr. Warne further indicated in his interview that he believed the practice of suspending these applications is contrary to guidance in the FAM.

The Secretary of State has the authority to issue U.S. passports to U.S. citizens (22 U.S.C. §§211a-212), and make regulations regarding the granting, issuance and denial of passports (E.O. 11295). Under Department regulations, passport specialists must adjudicate passport applications to determine, inter alia, whether the applicant has met his or her burden of establishing U.S. citizenship. 22 C.F.R. §§ 51.40, 51.41. This is a core function of passport adjudication and not outside the normal duties and responsibilities of a passport specialist.

Section 51.43 of Title 22 of the Code of Federal Regulations states that an applicant born outside the United States must provide sufficient documentary evidence to show that he or she meets "all the statutory requirements for acquisition of citizenship . . . . under the provision of law or treaty *under which the person is claiming U.S. citizenship*" (emphasis added). However, this regulation is not intended to suggest that an applicant has discretion in choosing under what provision of law he or she will seek to establish citizenship for purposes of a passport application. Such an interpretation would unfairly require applicants to have a sophisticated knowledge of complex U.S. citizenship laws to determine which law would appropriately apply to them. The Department does not require the applicant to make such a determination, but rather reviews the evidence presented by the applicant and works with the applicant to establish a claim to citizenship under the appropriate provision of law.

The fact that the applicant submits evidence suggesting acquisition under the CCA does not always mean that the applicant's legal basis for citizenship is the CCA. A U.S. citizen can only acquire U.S. citizenship as provided for by the Fourteenth Amendment of the Constitution and by statute. In order for an individual to become a citizen under the CCA, he or she cannot have already acquired citizenship at an earlier date under a different statute. Indeed, the language of the CCA makes clear that, where the CCA applies, the beneficiary "*becomes* a citizen of the United States," meaning it cannot apply to someone who is already a U.S. citizen. INA § 320(a) (emphasis added).

WPC's practice of suspending CCA applications where the application presents evidence of possible earlier acquisition neither requires passport specialists to act outside the scope of their proper responsibilities, nor violates Department regulations. Moreover, WPC's practice is entirely consistent with Passport Services' national policies and guidance. The Department has consistently advocated attempting to document the earliest possible date of citizenship acquisition throughout its guidance, manuals, and training materials. The Department's policies and guidance on the CCA have also consistently made clear to passport specialists that the CCA is only available to those who have not previously acquired citizenship. For example, the Foreign Affairs Manual specifies at 7 FAM 1159, Evidence of Citizenship Under the Child Citizenship Act of 2000:

> Who Qualifies for U.S. Citizenship under this Statute: A child under the age of 18 (born on or after February 28, 1983) on February 27, 2001, who claims citizenship through the

naturalization of a parent or child born abroad to U.S. citizen(s) *who cannot transmit citizenship under any other section of the INA*.

7 FAM 1159.1(a) (emphasis added).

The investigators also considered Mr. Warne's allegation that this practice led to an improper duplication of effort by federal agencies. CCA applications must be accompanied by evidence of the applicant's admission to the United States as a lawful permanent resident alien (e.g. an LPR card) because admission for permanent residence is one of the requirements of the statute. *See* INA § 320(a)(3) (8 U.S.C. § 1431(a)(3)). LPR cards are issued by USCIS as proof of permanent resident status in the United States and proof of eligibility to work. CA/PPT's passport specialists are not instructed to look behind all LPR cards – that would be unnecessary and redundant. People who are already U.S. citizens are not eligible for (or in need of) LPR cards as proof of U.S. permanent resident status. However, incomplete information at the time of original issuance or just simple error can sometimes lead to issuance of an LPR card to someone who in fact derived citizenship by birth to a U.S. parent.[10] The potential duplication of effort resulting from CA/PPT's practice of suspending the very few CCA applications when the evidence presented suggests a possible earlier (at birth) acquisition date does not amount, therefore, to a bureaucratic redundancy but is rather a justified backstopping measure by which the Passport Services Directorate attempts to ensure that the U.S. Government has accurate information about the basis on which an individual acquired U.S. citizenship and when it was acquired, and protects the rights of U.S. citizens. This is not inconsistent with 31 U.S.C. § 9701(b)(2), which requires that any charge by an agency for a service provided by the agency be based on cost, value of the service, public policy or interest served, and other relevant facts.

As an agency responsible for documenting U.S. citizenship on behalf of the U.S. Government, CA/PPT has adopted a legally permissible policy that it will document the earliest (i.e. the correct) date of acquisition of citizenship by a passport applicant. This policy is not only legally permissible but also one that benefits the Department, other U.S. government agencies, and the applicants themselves. The derivative citizenship worksheet on which date of acquisition is noted becomes a part of the applicant's passport record. It is relied on by the Department not only to determine an applicant's eligibility for a U.S. passport, but also to respond to other legitimate inquiries regarding how and/or when a given individual acquired U.S. citizenship.[11] These records may be requested directly by another federal agency with a need to know the information in the discharge of its official duties. Some citizenship records completed by the applicant can also be requested by applicants themselves directly from Passport Services. In the past, applicants have submitted a record request to obtain the citizenship record to use it as evidence of the date of citizenship acquisition, in applying for various federal and state benefits that require such evidence.

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[10] Therefore, although PPT guidance on adjudicating CCA applications, including the Foreign Affairs Manual (*see, e.g.*, 7 FAM 1159.1(f)(5)(a)), instructs that an LPR card is evidence of permanent resident status, this is not meant to suggest that it is conclusive proof that the bearer is an alien and not a citizen.

[11] The Department will only disclose information from a passport record in a manner consistent with its obligations under the Privacy Act, 5 U.S.C. § 552a, and other relevant laws.

Finally, it is worth underscoring that the number of applicants affected by the Department's policy is extremely small. In Fiscal Year 2010, the Department received 14,005,102 U.S. passport applications. In the same time period, CA/PPT sent 16,317 information request letters nation-wide to applicants requesting additional evidence to support a potential claim to U.S. citizenship at birth. This represents approximately .1% of all passport applications. More importantly, the approximately 16,000 letters sent includes many instances beyond the scope of this investigation, including cases where an applicant did not have a potential claim under the CCA or had not even submitted any evidence of acquisition of citizenship.

B. Allegation Regarding Improper Denial of "No Response Cases"

Mr. Warne has alleged that in cases where WPC requested that a CCA applicant submit additional evidence to determine if the applicant acquired U.S. citizenship at an earlier date, WPC passport specialists were directed to "[d]eny these applications in the event that the requested documentation of citizenship at birth was not submitted within ninety days, resulting in a forfeiture of the applicant's application fees." Mr. Warne has further alleged that this "impose[s] an undue financial burden on thousands of passport applicants" and "has resulted in a loss of application fees exceeding $100 per applicant, in addition [to] obstructing the ability of applicants to receive the passport to which they are entitled." The investigation found no evidence to substantiate any of these allegations.

Under CA/PPT policy, if an applicant does not submit documentation to show an earlier acquisition date, but has provided sufficient documentation to establish a claim under the CCA, passport specialists are directed to issue the passport. The investigators found no evidence to indicate that WPC diverged from the national policy in this regard, i.e., that CCA applications at WPC were being denied for failure to provide evidence of earlier acquisition of citizenship. None of those interviewed, including Mr. Warne, were aware of any instances where such a denial had occurred. WPC Director Finn made clear that, as a matter of agency policy, she reviews most if not all passport denial letters that the agency sends out. Ms. Finn was not aware of any instance in which a CCA application that established the applicant as a U.S. citizen was denied. Moreover, she also explained that if such a proposed denial had been sent to her, she would not have authorized the denial. Instead, she would have instructed the passport specialist to issue the passport on the basis of sufficient evidence for the CCA claim.

Thus, based on the information obtained during the investigation, the investigators have concluded that: 1) there is no evidence that WPC has improperly denied applications in the manner alleged by Mr. Warne; 2) there is not a substantial likelihood that such a denial will occur; and 3) that WPC's practice in adjudicating CCA applications does not impose an undue financial burden on applicants.

V. Conclusion

The investigation revealed that there was no violation of law, rule, or regulation, nor any evidence of gross mismanagement or abuse of authority. The investigators determined that the Department's practice of suspending CCA applications when there is an indication that the applicant may have acquired citizenship at an earlier date, is legally permissible and justified as a

matter of policy. In addition, the investigation found no evidence to show that WPC was improperly denying passport applications after the applicant failed to provide sufficient evidence in response to a request, no matter the experience level of the adjudicators . The Department does not plan to revise its practices relating to this matter, particularly in light of the benefits that can accrue to a U.S. citizen where an earlier acquisition date is preferable. No dollar savings are expected to result from this review. However, the Passport Services Directorate does plan to use this review as an opportunity to issue a nationwide reminder that, although passport specialists should attempt to document the correct basis for acquisition of citizenship in derivative citizenship cases, they should not deny an application for failure to respond to an IRL if the evidence already submitted with an application establishes entitlement to a passport.