

MEMORANDUM FOR: See Distribution

FROM: Assistant Commissioner
Office of Field Operations

SUBJECT: Valid Documentation for Blood Quantum Under Section 289
of the Immigration and Naturalization Act

The purpose of this memorandum is to provide interim guidance for processing travelers seeking admission to the United States under Section 289 of the Immigration and Nationality Act (INA), and to establish acceptable documentation, to the most uniform extent possible, for proof of the 50% blood quantum required under Section 289.

How Section 289 Applies

Section 289 of the INA provides: “Nothing in this title [INA Title II, Immigration] shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race.” 8 U.S.C. § 1359. The regulations implementing § 289 likewise state that the term “American Indian born in Canada” includes “only persons possessing 50 per centum or more of the blood of the American Indian race.” 8 C.F.R. § 289.1.

Section 289 status confers certain benefits on Canadian-born American Indians. Individuals eligible under § 289 are exempt from visa requirements and grounds of inadmissibility. Once an individual is admitted under § 289, he cannot be removed and is not subject to grounds of deportability.

Despite the many benefits of § 289 status, Canadian-born American Indians must still present themselves for inspection upon their arrival in the United States. A traveler applying for admission under § 289 has the burden of demonstrating to the U.S. Customs and Border Protection (CBP) officer his identity and Canadian citizenship as well as the requisite blood quantum.

American Indian Race for purposes of § 289 includes all indigenous races whose residence on the North American continent predates the arrival of Europeans. Any Canadian-born person who can demonstrate that he or she possesses a total of 50% or more blood quantum from a combination of one or more such race would qualify for § 289 status.

Thus, it would be possible for a person with a 50% blood quantum attributable, singularly or in combination, to a U.S. tribe (including Alaskan Native villages), a Canadian First Nation community, or an Inuit population to be eligible for § 289 status. Inuit are the original inhabitants of certain Arctic regions of Canada.

Although, this definition would include Inuit, it would exclude individuals who claim to be 50% or more Métis blood, because the Métis are not an American Indian Race that were in North America prior to European contact.

Determining 50% Blood Quantum

Field guidance regarding how an applicant can provide evidence of blood quantum should allow for a § 289 determination (b) (7)(E)

Aboriginal Affairs and Northern Development Canada (AANDC) is the departmental authority of the Canadian Government that oversees national registration and benefits for Canadian First Nations People. AANDC will provide official letters to Canadian First Nations People documenting the genealogical heritage as a means to provide a reasonable certainty that the traveler seeking admission to the United States under Section 289 is 50% blood quantum of a recognized Canadian Band, which is an indigenous American Indian Race.

The AANDC Genealogical Heritage Letter will also show if a parent or grandparent was given status through marrying into the Band or was native born. For reference, sample AANDC Genealogical Heritage Letters are attached to this memorandum.

Using AANDC Documentation

U.S. Customs and Border Protection (CBP) officers can accept the following documentation as reasonable certainty that a traveler seeking admission to the United States under Section 289 is 50% blood quantum (all three documents must be in the applicant's possession at the time of entry):

(b) (7)(E)

(b) (7)(E)

Using Canadian Band Documentation

Due to sovereignty concerns, not all recognized Canadian Bands or indigenous First Nations People, such as the Akwesasne Mohawk or Inuit, choose to apply for benefits through AANDC. Therefore, these First Nations People would not possess a Genealogical Heritage Letter from AANDC.

In these cases, CBP can accept the following documentation as reasonable certainty that a traveler seeking admission to the United States under Section 289 is 50% blood quantum (all three documents must be in the applicant's possession at the time of entry):

(b) (7) (E)

(b) (7)(E)

(b) (7) (E)

If you have questions or concerns, please contact (b) (6), (b) (7)(C), Director, LBI PMO at (b) (7)(C), (b) (6)

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