

UNCLASSIFIED STATE 00010952

JAN 14

SUBJECT: POLICY CHANGE RELATED TO CHILDREN BORN ABROAD THROUGH ASSISTED REPRODUCTIVE TECHNOLOGY (ART)

There has been a recent policy change related to children born abroad through assisted reproductive technology (ART). The previous policy required that a mother have a genetic connection to a child in order to qualify as a parent for the purpose of obtaining immigration benefits. Under the new policy, birth mothers (gestational mothers) who are also the legal parent of the child will be treated the same as genetic mothers for the purposes of immigration benefits.

Immigration of Children of Gestational, Legal Mothers: The Department of State and the Department of Homeland Security are now interpreting relevant U.S. law such that the definition of "child" will include the child of a genetic or gestational parent who is also a legal parent at the time of the child's birth. Under the new interpretation, INA Section 101(b) (8 U.S.C. Section 1101(b)) treats a child as being born "in wedlock" under INA Section 101(b)(1)(A) when the genetic and/or gestational parents are legally married to each other at the time of the child's birth and both parents are the legal parents of the child at the time and place of birth.

A "child legitimated" and a "legitimizing parent or parents" in INA Section 101(b)(1)(C) includes a gestational mother who is also the legal mother of the child. The term "natural mother" in INA Section 101(b)(1)(D) includes a gestational mother who is the legal mother of a child at the time and place of birth, as well as a genetic mother who is a legal mother of the child at the time and place of birth.

Retroactive Application: The new policy will be retroactive. There will be cases in which children born abroad to a gestational and legal mother were previously denied an immigration benefit under the prior interpretation. In such cases, parent(s) must submit a new application for their child, if they wish to re-apply. The application must include sufficient evidence demonstrating that they meet all relevant statutory and regulatory requirements as well all appropriate fees.

Kerry

UNCLASSIFIED STATE 00010952