

Travelers

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# State Department Officials On Changes to U.S. Visa Regulations Regarding Birth Tourism

**SPECIAL BRIEFING****OFFICE OF THE SPOKESPERSON  
VIA TELECONFERENCE**

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**MODERATOR:** Good afternoon, everyone, and thanks for joining today's call on changes to U.S. visa regulations regarding birth tourism. For your reference purposes only and not for reporting, we are joined today by [State Department Official One]. [State Department Official One] is also joined by two of his colleagues, [State Department Official Two], and [State Department Official Three]. From this point forward they should be referred to as State Department Official Two and Three respectively.

We will be able to take a limited number of questions, so for purposes of efficiency we ask that you press 1 then 0 now, rather than at the end of the opening statement, to queue up for questions. Again, this call is on background, the contents are embargoed until the conclusion of the call. I will now turn it over to our State Department official, who will begin our call with opening remarks, and after a brief pause we'll move to your questions.

**STATE DEPARTMENT OFFICIAL ONE:** Thank you, good afternoon. Effective January 24th, the Department of State is amending its B non-immigrant visa regulations to address what is

commonly referred to as birth tourism. The B visitor visa category is for a temporary visit for business or pleasure. The updated regulation will establish that pleasure excludes travel for the primary purpose of obtaining United States citizenship for a child by giving birth to the child in the United States. Under this amended regulation, consular officers overseas would deny any B visa application from an applicant whom the consular officer has reason to believe is traveling for that primary purpose of giving birth in the United States to obtain U.S. citizenship for the child.

This change is intended to address the national security and law enforcement concerns associated with birth tourism. The final rule also codifies a requirement that B visa applicants who seek medical treatment in the United States must demonstrate to the satisfaction of the consular officer their arrangements for such treatment and establish their ability to pay all costs associated with such treatment.

I'd be happy to take your questions.

**MODERATOR:** Okay, at this time, moderator, if you could open up the line of Matt Lee for our first question.

**QUESTION:** Hello? Am I on? Hello?

**OPERATOR:** Matt, your line is now open.

**QUESTION:** Hello, hello? Am I – can you hear me?

**STATE DEPARTMENT OFFICIAL ONE:** We can hear you.

**QUESTION:** Okay, great. Just a couple very brief ones. One, I just want to confirm that this does not apply – or does it – but that it doesn't apply to people from visa waiver countries and the ESTA process, that that's – that those people are not included.

Second of all, how exactly are consular officers going to determine whether a person's primary purpose of traveling is to give birth? Do you – will you be asking all women who appear to be of childbearing age whether that's their intention? Or how is this going to work? And then does it apply also – are there any changes to the CBP? When an applicant – when a visa holder presents themselves at an entry point to enter, does this change – is there anything that DHS is involved in

with this? Does it change what the consular – what the – sorry, the Customs and Border Protection agents will ask or say? Thank you.

**STATE DEPARTMENT OFFICIAL ONE:** So thanks, Matt. The first question, regarding visa waiver program and ESTA, for people who are applying for admission to the United States through ESTA, this would not apply to them. This applies only to people applying for B-1/B-2 visas.

On your third question, on DHS, I would simply have to refer you back to DHS for questions on their guidance.

And for the larger question of how will this be sort of operationalized, first off, this does not – this will not be a question that officers are asking all female applicants. They were expressly told that they should not be including this as a question to ask all female applicants. Officers would only raise this topic of primary purpose if they have a specific, articulable reason to believe that an applicant is pregnant and planning to give birth in the United States. At that point, the officer would have to determine what the primary purpose of travel is. In other words, is it to give birth in the United States to obtain U.S. citizenship for a child? Or is it some other rebuttable presumption, rebuttable reason that they would provide for giving birth in the United States?

All of our visa interviews for non-immigrant visas, for B-1/B-2 visitor visas, are conversations between the adjudicating consular officer and the applicant to determine eligibility for a visa, and our officers are highly trained professionals who already deal with a number of sensitive topics during visa interviews. And all applicants must currently demonstrate a credible, permissible purpose of travel.

**MODERATOR:** Okay. Let's move on to our next question, if we could open the line of Jennifer Hansler from CNN.

**QUESTION:** (Inaudible) for doing the call. A couple questions. Could you get into more specifics of what that specific articulable reason might be, given that they're not allowed to ask explicit question if a woman is pregnant or not? The White House has pointed to a national security concern behind this rule change. What specific concerns were those? How many people were taking advantage of this birth tourism loophole, and how many people do you expect will be affected by this new change?

**STATE DEPARTMENT OFFICIAL ONE:** Thanks. So as to a little bit more detail on the how, this could come up in an interview – as I note, a conversation between an applicant and an officer – in any number of ways. The most basic way would be that the applicant themselves notes on their visa application form that their purpose of travel is for medical treatment. That would then obviously lead to a conversation over what type of medical treatment the applicant is seeking. Those are conversations that happen every day already as we determine that applicants overcome the presumption of immigrant intent and that they can – that they have the financial ability to pay for whatever treatment it is they're seeking.

With regard to the national security concerns, first off, we would say that obviously travel for this purpose is inconsistent – incompatible, we feel – with temporary travel for pleasure on a visitor visa. Permitting short-term visitors with no demonstrable ties to the United States to obtain visas to travel to the U.S. primarily to obtain U.S. citizenship for a child creates a potential long-term vulnerability for the United States. As noted in the rule, foreign governments or entities, including entities of concern to the United States, may seek to benefit from birth tourism for purposes that would threaten the security of the United States.

This is a stark difference between aliens using a temporary visitor visa for the purpose of obtaining U.S. citizenship for their children and the extensive requirements applicants must meet to immigrate and naturalize to become U.S. citizens. The previous regulation failed to address the national security vulnerability and this is why we've made the change.

As to numbers, the Department estimates that thousands of children are born in the United States to B-1/B-2 non-immigrants annually. Precisely estimating the number of individuals who give birth in the U.S. after traveling to the United States on B-1/B-2 non-immigrant visas is challenging. However, reporting from U.S. embassies and consulates has documented trends showing an increasing number of B visa applications whose stated primary purpose of travel is to give birth in the United States.

**MODERATOR:** Okay, for our third question, could we open the line of Nick Wadhams?

**QUESTION:** Two things you brought up. One is: Is a consular officer allowed to ask a visa applicant if she is pregnant if, like, they look through that glass window and decide that she looks pregnant? Like, are – you said they won't bring it up in all cases and – but is the consular officer allowed to make that determination just looking at an applicant?

And then the second is: Do you have any more specifics on thousands? I mean, there are 4 million births in the United States every year. Thousands seems like a very small percentage, so I'm trying to understand why this is becoming such a large priority. Thank you.

**STATE DEPARTMENT OFFICIAL ONE:** All right. As to the questioning, I would just note every visa case is unique. The interview questions are tailored to the circumstances of each applicant. As I noted, consular officers have been directed not to ask all female applicants if they are pregnant or intend to become pregnant. What we are driving at here is what the actual primary purpose of travel is. Officers would only raise this topic if they have a specific, articulable reason to believe that a visa applicant may be pregnant and – and this is important; it is an “and” – planning to give birth in the United States. All visa applicants have to demonstrate to the satisfaction of the consular officer that they're qualified for the visa for which they are applying. We're committed to treating all applicants fairly and with respect. Our officers are highly trained professionals who already deal with a number of sensitive topics.

The second question was more specificity on the numbers. As I note, this is a challenging area for record keeping for us, because we don't generally track people's specific purposes of travel once they have their visa and once they enter. As I note, it's a growing concern given the fact that in recent years we've seen the trends increasing upwards.

**QUESTION:** So just to double check that, so visual cues can be used as a specific and articulable reason for a consular officer to ask that question?

**STATE DEPARTMENT OFFICIAL ONE:** This is – there would be no change in that from what our current guidance is, which is – have to do with sort of the totality of the circumstances and what comes out in an interview. But again, what we're getting to here is the primary purpose of the travel.

**MODERATOR:** Okay, moving on to a fourth question. Can you open the line of Suzanne Monyak from Law360?

**OPERATOR:** Ma'am, your line is now open.

**QUESTION:** Hi, thanks for having the call. I was just wondering – I know you said that officers would not be asking all women if they have plans to become pregnant or to give birth in the U.S.,

but I was curious if there were any plans to update the D6160 [\[1\]](#) form with that kind of question rather than making the visual determinations or other articulable reasons?

And secondly, this is something that came up with the health insurance immigration proclamation: How are consular officers going to determine the costs of certain medical treatments to evaluate if they think an applicant could afford those costs?

**STATE DEPARTMENT OFFICIAL ONE:** Sorry, you were breaking up a little bit, but I think the gist of your question was: Are we going to add a question about this to the DS-160 application form? As I noted earlier, there is already a question for purpose of travel, and medical travel is one of the drop-downs. That would be the trigger for much of this questioning, if applicants are acknowledging and self-reporting that that's the type of travel that they're going to be doing.

Now, the secondary question of how do we assess medical costs – this is – that process for how we assess an applicant's ability to pay for medical treatment is not impacted by this rule. We are already determining as part of our visa interview, as part of an applicant's sort of overall eligibility for a B1/B2 visa that medical treatment costs would be covered by the applicant, that they have the ability – financial ability in some way to do that.

**MODERATOR:** Okay. For our next question, can we open the line of Tracy Wilkinson from *LA Times*.

**OPERATOR:** Tracy, your line is now open.

**QUESTION:** Hi. Thanks. A similar question: Would, for example, consular officers be allowed to require pregnancy tests, or ask for pregnancy tests?

And second, you have said – you seem to be suggesting that, one, the risk to national security is that one day, some terrorist would have U.S. citizenship because he happened to have been born in the U.S. Do you have cases of that? I mean, is that a real problem that you guys have identified? Thank you.

**STATE DEPARTMENT OFFICIAL ONE:** Officers will – are not allowed to require any sort of pregnancy test. Again, the thrust of this is that the primary purpose of travel – it's not the pregnancy; it's the primary purpose of why the applicant wants to give birth in the United States.

To the second question, we feel that this is closing a loophole that circumvents the existing immigration and naturalization processes. So that is the point. I mean, I can't answer your question specifically, other than to say that we have a process for people to naturalize in the United States; we have a process for people who want to immigrate to the United States, and this type of travel circumvents that process.

**MODERATOR:** Okay. For our next question, can you open the line of Raquel Krahenbuhl?

**QUESTION:** Thank you. Thank you so much, everybody, for the call. I want to know how effective you guys think the new rule is or will be? Because the B1 and B2 visas are typically issued for 10 years. That means that a pregnant woman could enter the U.S. on a valid visa if she get this 10 years earlier.

**STATE DEPARTMENT OFFICIAL ONE:** The rule is specifically designed to be used at the time of visa application and visa issuance for the applicant's primary purpose of travel. As you note, many – in many countries, we issue a multiple-entry 10-year visa. In all of those interviews, in all of those reasons for travel, what the officers are looking at is the applicant's current intent for their travel. So this would be applied no differently than that.

**MODERATOR:** Okay. For our next question, can you open the line of Abigail Hauslohner from WaPo.

**QUESTION:** Hi. Thanks for doing this call. Going back to one of my colleagues who just asked this, just to confirm, you didn't mention any national security cases, so this is just speculation at this point that this – that there would be a national security case arising from birth tourism, or has there been any case like that?

And then also, to reiterate what a previous colleague said, because I wasn't quite clear on the answer, visual cues can be used as part of a consular officer's assessment. Is that – that's correct? You said the totality, so that seems to include visual cues.

And then – sorry – also could you just speak a little bit numerically about how much money in U.S. tax dollars has gone towards covering birth tourism? You mentioned thousands of cases annually. What does that look like as far as U.S. tax dollars? Thanks.

**STATE DEPARTMENT OFFICIAL ONE:** Thanks. So your first question is noted in the regulation. We're closing a loophole that creates the vulnerability. So as I noted, we feel that allowing this purpose of travel is a loophole that circumvents existing immigration and naturalization processes. I don't have an estimate for you on what this does cost U.S. taxpayers.

And as to the question on visual cues, I mean, there is no change in the rule that would regulate the questions consular officers could ask from one day to the other. So this would be tied up in the natural, normal conversations that occur in visa interviews. I would simply highlight that the change from our current regulations to this regulation and how we operationalize these interviews is adding a prong for the actual purpose of travel. In other words, because an applicant's pregnant, because an applicant wants to give birth in the United States, does not in and of itself mean the applicant will be refused the visa. It's the third prong that this rule changes, which is what is the reason you want to go to the United States to give birth? We have always, in cases where applicants are pregnant and have a desire to give birth, done a calculus to determine their eligibility for the visa based on (1) are they an intending immigrant to the United States and (2) will they be paying for their own – for their medical treatment or will the cost be covered in some other way.

We are now simply adding to it that this particular purpose of travel – going to the United States for the purpose of giving birth to a child to obtain U.S. citizenship – is not going to be allowed as pleasure travel. However, an applicant who is pregnant, who is planning to give birth in the United States but is going for some other primary purpose of travel – visiting a sick relative, going for business meetings – they could still be issued their visa. An applicant who is pregnant, who has no desire or no plan to give birth in the United States, would certainly still be issued a visa for whatever their other primary purpose of travel is. It's only impacting the segment of traveler who's going for this specific purpose.

**MODERATOR:** Okay. For our next question, can you open the line of Rebecca Rainey from Politico?

**QUESTION:** Hi there. Yes, just to follow up on that one question, so if people are showing signs or appear pregnant, then that will kind of activate this next question, this next prong. Is that what you're saying here?

**STATE DEPARTMENT OFFICIAL ONE:** All right. Let me give an answer. So as noted, if we want to look at this as three prongs, there has to be two prongs – the applicant is pregnant and there’s reason to believe the applicant is going to give birth in the United States, so it’s both of those things. So an applicant just – a consular officer just having like a feeling that an applicant might be pregnant wouldn’t be necessarily enough to get them to prong three. Similarly, we’ve instructed our officers not to inquire into the – not to inquire of all female applicants are you pregnant or do you intend to get pregnant. We’re specifically focusing this rule and how we operationalize it on applicants whose specific purpose of travel is to give birth in the United States for the purpose of transmitting citizenship.

**MODERATOR:** Okay. We have time for one more question, if you could open the line of Zolan from *The New York Times*.

**QUESTION:** Hey, thanks so much for having the call. So going back to the answer you just gave, those three prongs – as far as the second prong of there’s reason to believe they will give birth in the U.S., I’m still unclear, other than the example you provided of them listing that they’re going for medical care, how is it that an officer would determine that they’re – there’s reason to believe they’re going to give birth in the U.S. if they don’t list that, if they don’t list that example of seeking medical care?

And then as a follow-up to that, just because I’m not sure that we’ve still gotten clarity on this, are there any examples of somebody traveling to the U.S., giving birth, and then that posing a risk to national security?

**STATE DEPARTMENT OFFICIAL ONE:** Thanks. On your third question, I’m going to refer you back to the language in the rule. Back to the how and how would an officer determine these things. Again, we perform about 10 million visa interviews a year. They’re on a number of complex subjects, sensitive topics for us to determine that a B-1/B-2 visa applicant has a credible purpose of travel that aligns with the visa class for which they’re applying. So it could be part and parcel of an interview; it could be something the applicant notes on their visa application form; it could be other information that comes to the consular officer. Every case is literally unique that we adjudicate, so I don’t want to speculate as to how all the information would come up or what precisely the pattern of the interview would look like, because each one of these is an individual interaction between the consular officer and the applicant.

**MODERATOR:** All right. Thanks, everybody, for joining today. As we are at the end of the call, the contents are – the embargo on the contents is lifted. Thank you and have a great day.

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1. DS-160 [↑](#)

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