



August 5, 2021

PA-2021-17

## Policy Alert

SUBJECT: Assisted Reproductive Technology and In-Wedlock Determinations for Immigration and Citizenship Purposes

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is updating guidance in the [USCIS Policy Manual](#) regarding the determination of whether a child born outside the United States, including a child born through Assisted Reproductive Technology (ART), is considered born “in wedlock.”

### Background

The Immigration and Nationality Act (INA) provides that U.S. citizens may transmit citizenship to their children born outside of the United States in certain circumstances.<sup>1</sup> USCIS previously provided general guidance on eligibility of children who were born through ART to a legal gestational mother for immigration and citizenship purposes under the INA.<sup>2</sup>

Previously, USCIS required that the child's genetic parents (or the legal gestational parent and one of the genetic parents) be married to one another for a child to be considered born in wedlock. Additionally, USCIS defined “child” as the genetic, adopted, or gestational child of a U.S. citizen parent. This created a situation in which parents who did not meet the aforementioned criteria but had been recognized by the relevant jurisdiction as the legal and only parents of a child born through ART were not recognized as the child's parents for immigration purposes, and where their children were often considered to have been born out of wedlock.

To remedy this situation, USCIS now considers a child to be born in wedlock when the child’s legal parents are married to one another at the time of birth and at least one of the legal parents has a genetic or gestational relationship to the child. USCIS defines “child” to include the child of a U.S. citizen parent who is married to the child’s genetic or legal gestational parent at the time of the child’s birth if both parents are recognized by the relevant jurisdiction as the child’s legal parents. Children who meet these requirements, and whose application for a Certificate of Citizenship has been previously denied, may file a motion to reopen or reconsider the denial decision on a Notice of Appeal or Motion ([Form I-290B](#)).<sup>3</sup>

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<sup>1</sup> See [INA 301](#). See [INA 309](#). See [INA 320](#).

<sup>2</sup> See Policy Alert, [Effect of Assisted Reproductive Technology \(ART\) on Immigration and Acquisition of Citizenship Under the Immigration and Nationality Act \(INA\)](#), PA-2014-009 (October 28, 2014).

<sup>3</sup> See [8 CFR 103.5](#). In order to naturalize under [INA 322](#), a child must be under age 18.

This update to Volumes 6 and 12 of the Policy Manual is effective immediately and replaces the related guidance found in Chapters 21.4(a), (c) (subsection “Assisted Reproductive Technology”), (d)(1), and (d)(4) of the Adjudicator’s Field Manual (AFM). The guidance in the Policy Manual is controlling and supersedes any prior guidance on the topic.

### **Policy Highlights**

- Explains that, for purposes of family-based petitions and acquiring citizenship, USCIS considers a child born outside the United States to be born in wedlock when the child’s legal parents are married to one another at the time of child’s birth and at least one of the legal parents has a genetic or gestational relationship to the child.
- Updates the definitions of child both in the family-based petition and the citizenship context.
- Provides that the definition of child as clarified in this update is applicable to all citizenship provisions,<sup>4</sup> and includes the child of a U.S. citizen parent who is married to the child’s genetic or legal gestational parent at the time of the child’s birth (even if no genetic or gestational relationship exists with the U.S. citizen parent), if both parents are recognized by the relevant jurisdiction as the child’s legal parents.

### **Citation**

Volume 12: Citizenship and Naturalization, Part H, Children of U.S. Citizens [[12 USCIS-PM H](#)] (Chapters 2, 3, 4, and 5); and Volume 6, Immigrants, Part B, Family-Based Immigration, Chapter 8, Children, Sons, and Daughters [[6 USCIS-PM B.8](#)].

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<sup>4</sup> This includes [INA 320](#) and [INA 322](#).