



CHILDREN
& FAMILIES



PROPERTY
& BUSINESS



LIFE & ESTATE
PLANNING

THE LAW CENTER, S.C.

450 S. YELLOWSTONE DR.
MADISON, WI 53719
TEL 608-821-8200

602 PLEASANT OAK DR.
OREGON, WI 53575
TEL 608-835-6441

FAX 608-821-8201 · TOLL FREE 888-860-5437 · lawcenterwisconsin.com

IMMIGRATION OPTIONS FOR CHILDREN BORN THROUGH INTERCOUNTRY SURROGACY

By Attorney Emily Dudak Taylor
The Law Center for Children & Families
Madison, Wisconsin

Dated October 31, 2017

- Will the child be a U.S. citizen? *See* INA § 301.
 - If intended mother is genetic mother and a U.S. citizen – simple, INA § 301 applies and child is a U.S. citizen.
 - If intended mother is not genetic mother, look to intended father.
 - If intended father is genetic father and a U.S. citizen:
 - If child is marital, INA § 301 applies and child is a U.S. citizen.
 - If child is non-marital, INA § 309 applies and child is a U.S. citizen.
 - (The U.S. State Department looks at the sources of the sperm and the egg to determine whether the child was conceived in wedlock. Ask: are the sperm and the egg married?)
 - WARNING: there are residency requirements for the genetic parent through whom the child will derive U.S. citizenship. They are complicated and could be changing based on a SCOTUS decision in summer 2017.
 - Lastly, check INA §§ 320 and 322 for any last-ditch citizenship arguments.

- If the child is a U.S. citizen at birth, file for a Consular Report of Birth Abroad and passport after birth. May need surrogate's signature, but most U.S. Embassies and Consulates will only require the intended parents' signatures.

- If not a USC at birth, must obtain a visa (and make sure the child will be a citizen of the country of birth):
 - (In order of my preference.)
 - Step-child of U.S. citizen – not subject to quota system
 - Child of LPR – subject to quota system!
 - Adoption (possibly a Hague adoption)
 - Humanitarian parole
 - Beware of entering the United States with the child under the visa-exempt program for Canada or the visa waiver program for some European countries, as both require

© 2017 The Law Center, S.C. All Rights Reserved.

DISCLAIMER:

The posting and reading of this handout does not establish an attorney-client relationship with Attorney Emily Dudak Taylor or The Law Center for Children & Families, nor does this article constitute legal advice from Attorney Dudak Taylor to the reader or the public. The law constantly changes and facts vary widely. Before relying on any general legal information contained herein, please consult legal counsel as to your particular situation. Attorney Dudak Taylor is only licensed to practice law in Wisconsin and will therefore only speak to Wisconsin and federal U.S. law.

temporary intent, *i.e.*, you cannot enter under one of these program if you intend for your child to reside in the United States permanently.

- Helpful links
 - <https://travel.state.gov/content/travel/en/legal-considerations/us-citizenship-laws-policies/assisted-reproductive-technology.html>
 - <https://travel.state.gov/content/travel/en/legal-considerations/us-citizenship-laws-policies/assisted-reproductive-technology.html>
 - <https://travel.state.gov/content/passports/en/abroad/events-and-records/birth.html>