



## **Born stateless: Challenges faced by Americans Abroad in the Transmission of Citizenship to overseas-born children**

### **Introduction**

Since citizenship was first considered by the First Congress in 1790 the question of who shall be considered a natural born citizen has been dealt with by the legislative and judicial branches of government on 23 occasions. The Immigration and Nationality Act (INA) is the key piece of legislation driving the transmission of citizenship from parent to child. Overseas Americans can face unforeseen challenges to the transmission of U.S. citizenship to their overseas-born children that arise out of the provisions of the INA or out of U.S. State Department policies established to implement the INA.

### **What's in the Legislation**

Natural born citizenship is defined in the INA<sup>1</sup> both by parentage (at the time of birth at least one of the parents must be a U.S. citizen), place of birth (if born abroad then additional criteria exist related to the periods of U.S. residency of the U.S.-citizen parent) and marital status of parents (U.S. citizen mothers of children born out of wedlock must meet additional criteria related to U.S. residency and U.S. citizen fathers of children born out of wedlock must prove paternity, agree in writing to financially support the child until age 18 and acknowledge paternity under oath).

As the additional criteria are not imposed if the child is born in the United States, the legislation clearly gives merit to the location of the birth and to the marital status of the parents than to the blood relationship between the parent and the child. Other options for transmitting natural born citizenship manifest if the U.S.-citizen parent is employed by the military or government; choice of employer, therefore is also a dimension that triggers considerations of greater merit than blood relationship.

### **Being Born Stateless**

Defining citizenship by right of both parentage and place of birth have brought us to a situation where a study conducted in the year 1981 shows that one in every ten children born abroad to U.S. parents were denied citizenship at birth because a U.S. citizen parent did not meet the then current U.S. residency requirements for transmission of citizenship.<sup>2</sup> Although three legislative gestures have been made since 1981 to adjust the residency requirements to improve the fairness of the law, it is perhaps time to reconsider existing residency requirements and the implications of ensuring that any person born outside the U.S. to parents at least one of whom is a U.S. citizen may become a natural born U.S. citizen at birth.<sup>3</sup>

### **An Important Inter-National Conversation**

Many Americans take the view that all U.S. citizen parents should be able to transmit their U.S. citizenship to their children, regardless of their country of residence, at the time of the child's birth.

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<sup>1</sup> The INA was passed in 1952 and amended in 1957, 1966, 1972, 1978, 1986 and 1994 and amended by the Immigration and Nationality Technical Corrections Act of 1994.

<sup>2</sup> Source: American Citizens Abroad: "The Citizenship Rights of American Children Born Overseas."

<sup>3</sup> The Child Citizenship Act of 2000 adds a provision to the Immigration and Naturalisation Act for an overseas born child of one or more US-citizen parents residing abroad indefinitely who is not, under the law, recognised as a natural born US citizen to obtain US citizenship through a special naturalisation procedure.

More discussion needs to occur to ensure that the policy regarding the transmission of U.S. citizenship treats parents who live abroad with the same regard as parents who do not, and that children of overseas Americans are not born stateless.

### **ART Babies No Longer Born Stateless**

Democrats Abroad wishes to acknowledge the recent policy change by the U.S. State Department 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. Families using fertility treatments with donor eggs were unable to transmit US citizenship to the child via the mother. If the father was a non-US citizen, then the child would not have acquired U.S. citizenship. This resulted in children born to U.S. mothers being stateless and caused great hardship to these families.

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. This is a great outcome for U.S. parents living abroad and we are grateful for the actions of the State Department in addressing this policy oversight.