

In vitro babies denied U.S. citizenship

By Michele Chabin, Special for USA TODAY

JERUSALEM – Chicago native Ellie Lavi could not have been happier when she gave birth to beautiful twin girls overseas.

By Tomer Appelbaum

She found that the [U.S. State Department](#) did not share in her joy when she went to the [U.S. Embassy](#) in Tel Aviv to apply for citizenship for her children.

An embassy staffer wanted to know whether Lavi got pregnant at a fertility clinic. She said yes and was told that her children were not eligible for citizenship unless she could prove that the egg or sperm used to create the embryo was from an American citizen.

"I was humiliated and horrified," Lavi said. "We're talking about the children I gave birth to. Of course they're my children."

The incident points out what critics say is a glaring inequity in U.S. citizenship regulations. A child adopted overseas by a U.S. citizen is eligible to become an American, and a baby born in the [USA](#) is American even if the parents are not.

But a child born to a U.S. citizen overseas through the increasingly common practice of in vitro fertilization with embryos from donor eggs and sperm is not American, unless an American is one of the donors. And that can be hard to prove since clinics may not reveal such things about their donors due to confidentiality agreements, immigration law experts say.

"The problem is that the law hasn't kept up with the advances in reproductive technology," said Melissa Brisman, a lawyer in [New Jersey](#) who specializes in fertility issues.

The U.S. [State Department](#) says a child born outside the USA to an American cannot receive citizenship until a biological link with at least one parent is established. That link does not exist if an infertile woman uses donor eggs at a clinic to conceive.

No such biological link exists for parents who adopt children overseas either, but U.S. law exempts adopted children from the regulation.

"Although the regulations are designed to prevent the abuse of American citizenship laws" through fraudulent claims of parentage, Brisman said, "they're also hurting infertile Americans who simply want to pass on their citizenship to their kids."

Lavi said she was in a crowded hall with her kids when the embassy staffer asked her over a speaker from behind a glass partition, "Are these children yours?"

Lavi, a single mom in her 40s, said she felt the question was an invasion of privacy and she was not clear about the law regarding such births.

Marla Gatlin, founder of Parents Via Egg Donation in Portland, Ore., says parents have been punished for not knowing the rules and telling the truth to the embassy.

Gatlin says pregnant Americans living overseas "often decide to either fly back to the U.S. to give birth, or they lie" to consular officials about how they conceived. Those who lied "aren't going to talk about it now, in fear of having their children's citizenship revoked," she says.

The U.S. State Department says it is merely following proper interpretation of the law, but it is studying whether it can interpret the Immigration and Nationality Act to allow U.S. citizen parents "to transmit American citizenship to their children born abroad through artificial reproductive technology in a broader range of circumstances."

Michele Koven Wolgel, an Israel-based lawyer who specializes in U.S. immigration law, says many embassy officials ask only older women, especially single moms, about the method of birth.

"That's called profiling," she says.

Most of the 200,000 U.S. citizens in Israel have dual citizenship, and fertility treatments are common because they are free. Wolgel says the State Department is going too far in its interpretation of the U.S. Immigration and Nationality Act.

She finds it hard to believe that the intent of the law "was to prevent a woman who carried a child for nine months, who gave birth to the child and whose name appears on the birth certificate from transferring her U.S. citizenship to the child."

"There is an established process for U.S. parents who want to transfer citizenship to their adopted children, but no such avenue exists for parents whose children, conceived with someone else's eggs or sperm, emerged from their wombs," Wolgel said.

Moreover, lawyers say, non-U.S. citizens who live outside the USA may be able to claim U.S. citizenship for their child if they can prove their egg or sperm donors (the "biological parents") are U.S. citizens.

"The State Department says the donor determines citizenship, so this would hold even for foreigners who visited the U.S. only for the impregnation, and the child was born abroad," Wolgel says.

Even advocates for strict enforcement of immigration laws concede the rules might need tweaking.

"The law exists for a very good reason: to avoid having people claim that other people's kids are their own for purpose of obtaining U.S. citizenship," said Kristen Williamson, spokesperson for the Federation for American Immigration Reform.

Even so, "this is one of those unique instances that might require special consideration ... without wholesale abandonment of the law."

Lavi has given up actively pursuing U.S. citizenship for her toddler daughters.

"If I'd gone back to the States to give birth, my children would have automatically received American citizenship," Lavi said. "But I don't live there. I live here."

<http://www.usatoday.com/news/world/story/2012-03-19/in-vitro-citizenship/53656616/1>