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In vitro babies denied U.S. citizenship

By Michele Chabin, Special for USA TODAY

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

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

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By Tomer Appelbaum
Ellie Lavi, an American-Israeli, plays with her daughters, Maya, left, and Shira, at their home in Tel Aviv. Lavi had trouble when she applied for U.S. citizenship for them.

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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."

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Jeff Morris · Top Commenter · Brenau

Those are her children, she is going to be held responsible for them by government agencies like social services, etc. Those kids are citizens. The government has once again dropped the ball.

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Keith Lucas · Top Commenter · Manassas, Virginia

This is not uncommon. The laws have not kept up with technology. She is an American citizen who gave birth to a child. Case closed. We still need a clarification of the 14th amendment, people here illegally should not be covered by it.

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Marcy Bernstein · Top Commenter

I have been saying that children of illegals born here should not be citizens for years. Apparently the Government does not know the definition of Illegal. The 14th Amendment was for the children of American Indians and children of slaves brought here for the Plantation owners. It is time we get rid of the 14th Amendment and recind citizenship of all children born to illegals.

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Tayyab Khan · Loyola Chicago

If you don't live here why do you want your kids to have US citizenship???

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Mark Benninger · Top Commenter

That truth is self evident.

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Iam Freedom · [Subscribe](#) · Top Commenter · Anti-propaganda squad at The American People

No all Americans live in America. You can't be that dim.

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Christopher James Flathmann · Top Commenter

Iam Freedom : Not all Americans "stay" here, many work overseas, or have other reasons to be overseas. We have laws that DO cover that. We do not have any laws that says a woman who "lives" overseas can transfer her "citizenship" to her child when she says ""But I don't live there. I live here." You LIVE there, and do not want to come here to have the child, yet want the benefits of being a US Citizen for your child? Anti Propaganda Squad? You one of those paid Israeli's who clutters our forums with "Pro-Israel-No-Matter-What_it_does" propaganda?

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Ian Haywood · Top Commenter

Sounds like she failed to do the proper research before going to a foreign fertility clinic, which prompts the question, "Why a foreign clinic?" Did she fail somehow to meet the standards of a clinic stateside? If a DNA test were performed, would she be the biological mother of the twins? If so, then it's her kids and they should have citizenship. If not, she is no more than a surrogate mother for someone else's kids.

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Corey Brown · Top Commenter · Fallbrook High

That's such BS. If you read the article, she went abroad because the treatments are free in Isreal. She's infertile so she went with in vitro fertilization. That's the option that many infertile couples/women choose. They are her children even if a DNA test would not show it. If she had adopted them, she would have a route. She did more than adopt them, she gave birth to them.

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Gabe Bowne · Univerity of California, Davis

1. She lives in Israel, so its not a "foriegn clinic" to her.
2. If she carried the kids for 9 months, and is raising them, she is not simply a "surrogate mother for someone else's kids." That is ridiculous, these are her kids.

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Lee Sanders · [Subscribe](#) · Top Commenter · Works at Hard at work traveling and having fun.

She should have gone to Octomoms clinic in California, there would have been no problem. LOL

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