

March 26, 2014

Everyone immigrating to the U.S. must have their own visa, except...

Question: “My son recently had a child with a woman who was being filed for. The baby was born in November 2013 and I now understand that her papers have come through. The baby was not filed for. The mother does not want to leave her baby, and I don't know how to advise them. What is the best way to proceed?”

Generally, everyone immigrating to the US must have their own visa. The one exception is if an expecting mother gives birth after she is issued an immigrant visa, but before she has the chance to move to the US. In this case, the infant does not require a visa. For example, if your grandchild's mother was issued her visa on November 1, 2013, and her child was born November 5, 2013, the child will not need a visa, and can immigrate together with mom.

If the child was born before she was issued a visa, the child will need his or her own visa. If the visa category of the mother allows for derivatives to be added to the case (for example, an F11, the unmarried son or daughter of a US citizen over 21), the child can be added as a derivative to the mother's petition as long as the mother has not yet naturalized.

Immediate relative visa categories (such as IR1, spouse of an American citizen, or IR2, child of American citizen under 21), do not allow for derivatives, so a separate petition must be filed for the child. If the mother was filed for by her husband, the husband could file a separate petition for the child as a stepchild, for example.

Because the answer will depend on the type of visa the mother was issued and when the child was born, the best next step would be to send an email explaining the circumstances and a copy of the child's birth certificate to kingstoniv@state.gov.

Reminder for U.S. Citizens: All U.S. citizens who live outside of the United States and want to vote by absentee ballot that they must complete a new Federal Post Card Application (FPCA) every year if they wish to vote from abroad. For more information, please visit the www.fvap.gov. You may drop off your voting materials with postage affixed at the U.S. Embassy in Kingston or at the U.S. Consular Agencies in Montego Bay and the Cayman Islands for delivery to the United States.