

BIRTH TOURISM IN THE UNITED STATES

MINORITY STAFF REPORT

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

UNITED STATES SENATE



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I. Executive Summary

Birth tourism refers to expecting mothers traveling to the United States to obtain U.S. citizenship for their children. These tourists often cite the superior educational and professional opportunities available in the United States as their justification for making such a trip. Obtaining U.S. citizenship for their children is a hedged bet—a rainy day fund for a better life.

The benefits of U.S. citizenship require little explanation and should be cherished by all who are presented with such a unique privilege. Birth tourists surely understand the benefits, but fail to comprehend the privilege of U.S. citizenship. Birth tourism is problematic because it short circuits and demeans the U.S. naturalization process. U.S. citizenship is not a backup plan.

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This report discusses the State Department’s visa policies and other data maintained by the United States Government relevant to birth tourism. It also details two birth tourism companies who served this market.

2015 changes to State Department policies made birth tourism more accessible. In February 2015, State issued a cable on visa adjudication for birth tourism cases to all diplomatic posts. In that cable, the Department reiterated “travel to seek medical treatment, including giving birth, is legally permissible using a B visa.” The cable also instructed that tourists “traveling for the purpose of giving birth should be evaluated in the same manner as applicants traveling for other medical purposes.” This meant that birth tourists no longer had to misrepresent the purpose of their visit to the United States.

The State Department’s 2020 rule change made it more difficult for birth tourism companies to continue operations. In 2020, after the Committee began its investigation, State amended its regulations governing B visas. The amended rule confirmed “that travel to the United States with the primary purpose of obtaining U.S. citizenship for a child by giving birth in the United States is an impermissible basis for the issuance of a B nonimmigrant visa.” In making this change, the Department determined “that a more reasonable interpretation of the statutory provision and a better policy is that the statutory provision authorizing the issuance of visas to temporary visitors for pleasure does not extend to individuals whose primary purpose of travel is to obtain U.S. citizenship for a child.”

During its investigation, the Committee reviewed Customs and Border Protection TECS records in attempt to understand trends in birth tourism travel to

the United States. TECS records document incoming persons as they arrive at United States ports of entry. During this review, several trends emerged including large cash declarations by birth tourists, return visits, and significant adjustments for total healthcare costs.

Significant Cash Declarations. Birth tourists often made significant cash declarations upon entry to the United States. These declarations ranged from several thousand to several hundred thousand dollars. While most cash declarations ranged between \$20,000 and \$50,000, the TECS narrative for one birth tourist from 2019 reported a \$301,400 cash declaration for medical expenses.

Return Visits. Birth tourists often traveled to the United States several times to secure citizenship for numerous children. It was common for those tourists to cite the educational and professional opportunities in the United States as their reason for doing so.

Medical Bill Adjustments. In several instances, the Committee identified tourists who received adjustments exceeding \$25,000. As a result, in some cases the state where the child was born was left to pay the outstanding difference on the total costs incurred by the birth tourist. For example, one TECS narrative from 2019 documented that a birth tourist paid “\$4,000 out of an approximate \$34,000 hospital bill.” According to the narrative, the State of California paid the remaining balance.

As the practice of birth tourism became more prevalent, a cottage industry developed with entire companies catering to these individuals. This report examines two such companies who abused U.S. birthright citizenship. The first—Ada International—was based in California and catered to mostly Chinese customers. The second—Miami Mama—was based in Florida and worked primarily with Russian tourists. Since the Committee began its investigation, both companies appear to have discontinued operations. The report also profiles each company including pricing, housing, and healthcare services offered.

II. Findings and Recommendations

Findings of Fact

- (1) **Changes to State Department policies governing the issuance of B visas in 2015 made birth tourism more accessible.** This change instructed consular officers not to deny visa applicants solely because they planned to travel to the United States to obtain citizenship for their child and that birth tourists should be treated like other medical visa applicants. This change also made visa fraud cases related to birth tourism more difficult to prosecute.
- (2) **After the Committee began its investigation, in 2020, the State Department amended its policies governing the issuance of B visas to prohibit travel to the United States solely for birth tourism.** In its public notice regarding the rule change, the Department said visits “for pleasure” was an ambiguous category under the INA which previously could be interpreted to permit birth tourism. State “concluded that a more reasonable interpretation of the statutory provision and a better policy is that the statutory provision authorizing the issuance of visas to temporary visitors for pleasure does not extend to individuals whose primary purpose of travel is to obtain U.S. citizenship for a child.”
- (3) **The State Department’s 2020 policy change prohibiting birth tourism was a primary reason Miami Mama discontinued operations.** During an interview with the Committee, one of Miami Mama’s owners said this rule change complicated their business operations to the point where it no longer made sense to continue offering services to birth tourists.
- (4) **Birth tourists often make substantial cash declarations upon entry to the United States, make return trips to secure citizenship for numerous children, and receive significant adjustments for total hospital costs incurred.** According to CBP TECS records reviewed by the Committee, the cash declarations made by birth tourists ranged from several thousand dollars to several hundred thousand dollars. Birth tourists also made return visits citing the superior educational and career opportunities available to United States citizens. Last, the Committee found numerous instances where tourists received adjustments exceeding \$25,000 and some cases where the state where the child was born was left to pay the difference.

Recommendations

- (1) The State Department and Customs and Border Protection should strengthen their partnership to more comprehensively track birth tourism activity in the United States.**
- (2) Congress should clarify in law that the Immigration and Nationality Act does not authorize the issuance of visas to temporary visitors for pleasure who only travel to the United States to obtain citizenship for their child.**

III. Background

The legal doctrine of birthright citizenship in the United States derives from the English common law of “birthright subjectship.”¹ English common law held “that birth within the king’s dominion established the individual as a subject regardless of [his or her] parents’ nationality.”² The American Colonists likewise believed “they owed allegiance to their individual colonial legislatures and to the King.”³

Today, birthright citizenship or *jus soli*, is memorialized in the Citizenship Clause of the Fourteenth Amendment.⁴ That clause states “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”⁵ The Immigration and Nationality Act reaffirms this by stating “a person born in the United States, and subject to the jurisdiction thereof” is a “national[] and citizen[] of the United States at birth.”⁶

While birthright citizenship has many undeniable benefits, it also enabled a troubling and unintentional phenomenon known as “birth tourism.” Birth tourism describes the practice by which expecting parents travel to the United States to give birth and secure U.S. citizenship for their children.⁷

A. Birthright Citizenship in the United States

Birthright citizenship in the United States is enshrined in the Fourteenth Amendment’s Citizenship Clause. Prior to the adoption of the Fourteenth Amendment, the Supreme Court’s 1859 *Dred Scott v. Sandford* decision called this principle into question.⁸ The Court held that Scott was “not a citizen . . . in the sense in which that word is used in the Constitution,” and therefore that American common law was not applicable to freed slaves of African descent.⁹

¹ Jonathan C. Drimmer, *The Nephews of Uncle Sam: The History, Evolution, and Application of Birthright Citizenship in the United States*, 9 GEO. IMMIGR. L.J. 672, 677 (1995).

² *Id.* at 672.

³ *Id.* at 677.

⁴ BEN HARRINGTON, CONG. RESEARCH SERV., LSB10214, THE CITIZENSHIP CLAUSE AND “BIRTHRIGHT CITIZENSHIP”: A BRIEF LEGAL OVERVIEW 1 (2018).

⁵ U.S. CONST. amend. XIV, § 1.

⁶ Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 301, 66 Stat. 235 (1952) (codified at 8 U.S.C. § 1101).

⁷ Matthew D. Kugler, *Current Developments in Immigration Law: The Debate Surrounding Birth Tourism*, 32 GEO. IMMIGR. L.J. 321 (2018).

⁸ Leslie F. Goldstein, *Technologies of Travel, Birth Tourism, and Birthright Citizenship*, 79 MD. L. REV. 177, 179 (2019).

⁹ *Dred Scott v. Sandford*, 60 U.S. 393, 454 (1857); Leslie F. Goldstein, *Technologies of Travel, Birth Tourism, and Birthright Citizenship*, 79 MD. L. REV. 177, 179 (2019).

Several years later, Congress addressed the *Dred Scott* decision by passing the Civil Rights Act of 1866.¹⁰ This law codified birthright citizenship nationally.¹¹ In the same year, Congress reiterated its commitment to birthright citizenship by referring the Fourteenth Amendment to the States for ratification.¹²

Despite the Fourteenth Amendment's adoption, the Citizenship Clause required further judicial interpretation. For example, in the 1898 Supreme Court case *U.S. v. Wong Kim Ark*, the Court considered whether the child of Chinese-citizen parents, who were lawful permanent residents in the United States, was a U.S. citizen under the Fourteenth Amendment.¹³

In resolving this issue, the Court determined the Fourteenth Amendment “in clear words and in manifest intent, includes the children born, within the territory of the United States, of all other persons, of whatever race or color, domiciled in the United States.”¹⁴ The Court explained further, “every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction of the United States.”¹⁵ Therefore, the Court held there are no considerations “that can constrain or permit the judiciary to refuse to give full effect to the preemptory and explicit language of the Fourteenth Amendment, which declares and ordains that ‘[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.’”¹⁶

B. Naturalization

Persons not granted citizenship at birth can become U.S. citizens through naturalization. To submit an application for naturalization, an individual must meet several requirements.¹⁷ First, applicants must be 18 years old and a permanent resident for at least five years at the time the application is filed.¹⁸ Second, applicants must demonstrate they “have lived for at least 3 months in the state or [U.S. Citizenship and Immigration Services] district” where they apply and document continuous residence five years prior to the submission of the

¹⁰ Civil Rights Act of 1866, Pub. L. No. 39-26, 14 Stat. 27 (1866).

¹¹ *Id.*

¹² Leslie F. Goldstein, *Technologies of Travel, Birth Tourism, and Birthright Citizenship*, 79 MD. L. REV. 177, 179 (2019).

¹³ *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).

¹⁴ *Id.* at 693.

¹⁵ *Id.*

¹⁶ *Id.* at 694 (quoting U.S. CONST. amend. XIV, § 1).

¹⁷ U.S. DEP'T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGRATION SERV., *Thinking About Applying for Naturalization?*, <https://www.uscis.gov/sites/default/files/document/guides/G-1151.pdf>.

¹⁸ *Id.*

application.¹⁹ Beyond residency requirements, applicants must be able to read, write, and speak basic English.²⁰ Applicants must also maintain a basic understanding of U.S. government and “demonstrate an attachment to the principles and ideals of the U.S. Constitution.”²¹

If an individual is eligible to naturalize, they must go through several steps to become a U.S. citizen.²² First, applicants must prepare and submit an N-400 form.²³ This application includes documents demonstrating eligibility and other supporting documents like passport photos.²⁴ After candidates submit the application, the FBI records biometrics for its criminal background checks.²⁵ These background checks must be completed before an applicant will be granted an interview.²⁶

Once the preliminary steps are completed, applicants sit for their interview with U.S. Citizenship and Immigration Services (“USCIS”).²⁷ During that interview, USCIS asks questions about the materials submitted in the N-400 form and applicants sit for English and civic tests.²⁸ In some cases, applications are continued because an individual fails the English or civics test, submits incorrect documentation, or USCIS determines they need additional information.²⁹ Applicants who fail one of the examinations are given another opportunity within 60 to 90 days of their first interview.³⁰

Following the interview, USCIS provides the applicant with a “written notice of decision.”³¹ If USCIS denies the application, individuals have 30 days to submit a formal appeal.³² If an applicant fails to meet this deadline, USCIS’s decision is final.³³ For those USCIS approves, the naturalization process concludes with an

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*; U.S. DEP’T OF HOMELAND SECURITY, U.S. CITIZENSHIP & IMMIGRATION SERV., POLICY MANUAL: CITIZENSHIP AND NATURALIZATION (2022).

²² U.S. DEP’T OF HOMELAND SECURITY, U.S. CITIZENSHIP & IMMIGRATION SERV., 10 STEPS TO NATURALIZATION: UNDERSTANDING THE PROCESS OF BECOMING A U.S. CITIZEN (2022), <https://www.uscis.gov/sites/default/files/document/brochures/M-1051.pdf>.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

oath of allegiance.³⁴ This oath is often administered by a judge during a judicial ceremony.³⁵

C. United States Visa Policy & Admission of Nonimmigrants

The Immigration and Nationality Act (“INA”) governs all migration to the United States.³⁶ For this purpose, the INA distinguishes foreign nationals who are admitted on a temporary basis from those admitted permanently.³⁷ Foreign nationals admitted on a temporary basis are referred to as nonimmigrants.³⁸ This class includes “tourists, foreign students, diplomats, temporary agricultural workers, cultural exchange visitors, internationally known entertainers, foreign media representatives, intracompany business personnel, and crew members on foreign vessels.”³⁹

While nonimmigrant visitors have a positive influence on the economy, their admission at times may also lead to security concerns and illegal immigration.⁴⁰ For example, “recent estimates suggest that nonimmigrants who overstay their visas now account for more than half of all new entrants to the unauthorized alien population.”⁴¹ Congress also recently highlighted the efforts of certain individuals admitted as non-immigrants to influence debate on U.S. college campuses and compromise federally funded research projects.⁴²

1. Nonimmigrant Visas

The State Department (“State”) and the Department of Homeland Security (“DHS”) each have significant roles in nonimmigrant admissions to the United States.⁴³ On the front end of the process, foreign nationals seeking nonimmigrant admission must submit a visa application to a U.S. embassy or consulate.⁴⁴ Once submitted, an applicant must satisfy a State Department consular officer that

³⁴ *Id.*

³⁵ *Id.*

³⁶ Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 166 (1952).

³⁷ *Id.*

³⁸ *Id.*

³⁹ JILL H. WILSON, CONG. RESEARCH SERV., R45040, IMMIGRATION: NONIMMIGRANT (TEMPORARY) ADMISSIONS TO THE UNITED STATES 1 (2019).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² STAFF OF S. PERMANENT SUBCOMM. ON INVESTIGATIONS, 116TH CONG., REP. ON CHINA’S IMPACT ON U.S. EDUCATION SYSTEM (COMM. PRINT 2019); STAFF OF S. PERMANENT SUBCOMM. ON INVESTIGATIONS, 116TH CONG., REP. ON THREATS TO THE U.S. RESEARCH ENTERPRISE: CHINA’S TALENT RECRUITMENT PLANS (COMM. PRINT 2019).

⁴³ JILL H. WILSON, CONG. RESEARCH SERV., R45040, IMMIGRATION: NONIMMIGRANT (TEMPORARY) ADMISSIONS TO THE UNITED STATES 2 (2019).

⁴⁴ *Id.*

applicant is eligible to receive a nonimmigrant visa.⁴⁵ Upon entry to the United States, a DHS Customs and Border Protection (“CBP”) inspector must be convinced of the same.⁴⁶ For each of these evaluations, the burden is on the applicant to demonstrate he or she qualifies for a nonimmigrant visa.⁴⁷

Nonimmigrant visas are very broad, spanning 24 categories and 80 different visa types.⁴⁸ Some of these categories cover diplomats, tourists, temporary workers, multinational corporate executives, and students.⁴⁹ For each of these categories, there are different requirements “regarding length of stay, foreign residence requirements, employment authorization, labor market test requirements, [and] annual numerical limit.”⁵⁰

Under the Visa Waiver Program, however, some nonimmigrant visitors can travel to the United States without obtaining a visa.⁵¹ In particular, business and tourist visitors from 40 countries in Europe, Asia, Oceania, and South America can travel to the United States without a visa for 90 days or less.⁵² Before traveling to the U.S., visa waiver travelers “must obtain pre-travel authorization through the Electronic System for Travel Authorization (“ESTA”).”⁵³ DHS runs this system and “determines the eligibility of the foreign national to enter under the [waiver program].”⁵⁴ Once granted, ESTA authorization is valid for multiple entries over two years.⁵⁵

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 101(a)(15), 66 Stat. 167 (1952); JILL H. WILSON, CONG. RESEARCH SERV., R45040, IMMIGRATION: NONIMMIGRANT (TEMPORARY) ADMISSIONS TO THE UNITED STATES 5 (2019).

⁴⁹ Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 101(a)(15), 66 Stat. 167 (1952).

⁵⁰ JILL H. WILSON, CONG. RESEARCH SERV., R45040, IMMIGRATION: NONIMMIGRANT (TEMPORARY) ADMISSIONS TO THE UNITED STATES 5 (2019).

⁵¹ MICHAELA D. PLATZER & JILL H. WILSON, CONG. RESEARCH SERV., IF10847, THE VISA WAIVER PROGRAM: BALANCING TOURISM & NATIONAL SECURITY 1 (2018).

⁵² *Visa Waiver Program Requirements*, U.S. DEPT OF HOMELAND SECURITY (2022), <https://www.dhs.gov/visa-waiver-program-requirements>.

⁵³ MICHAELA D. PLATZER & JILL H. WILSON, CONG. RESEARCH SERV., IF10847, THE VISA WAIVER PROGRAM: BALANCING TOURISM & NATIONAL SECURITY 1 (2018).

⁵⁴ *Id.*

⁵⁵ *Id.*

a. Visitors for Pleasure

The most commonly used nonimmigrant visa category pertaining to birth tourism is visits for pleasure. This travel falls under State's B-2 visa category and includes travel that is recreational, including tourism, visiting friends or relatives, or is related to medical treatment, activities of a fraternal, social, or service nature.⁵⁶ Individuals using these visas cannot receive payment for any activities performed while in the United States.⁵⁷ When compared to other nonimmigrant categories, "tourists have consistently been the largest nonimmigrant class of admission to the United States."⁵⁸

b. Policies Governing Admission of Visitors for Pleasure

Beyond agency policies and regulations, the INA Section 212 establishes several grounds for inadmissibility.⁵⁹ These include:

- health-related grounds;
- past criminal convictions;
- security or terrorist activities;
- public charge;
- labor certification and qualifications for certain immigrants;
- illegal entrants and immigration violators;
- lack of valid passport and related entry documents;
- ineligible for citizenship;
- aliens previously removed; and
- miscellaneous (polygamists, kidnappers, and unlawful voters).⁶⁰

The INA does, however, provide waivers for foreign nationals found inadmissible to the United States. For example, the DHS Secretary has the authority to waive an inadmissibility determination based on health-related grounds "in the case of any alien who is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa."⁶¹ Likewise, waivers may be issued to certain foreign nationals based on compassionate grounds or when it is in the U.S. national

⁵⁶ U.S. Dep't of State, *Visitor Visa*, <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html>.

⁵⁷ *Id.*

⁵⁸ JILL H. WILSON, CONG. RESEARCH SERV., R45040, IMMIGRATION: NONIMMIGRANT (TEMPORARY) ADMISSIONS TO THE UNITED STATES 6 (2019).

⁵⁹ Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 212(a), 66 Stat. 182 (1952) (codified at 8 U.S.C. § 1182).

⁶⁰ *Id.*

⁶¹ *Id.* at 1182(g); 22 C.F.R. § 40 (2019).

interest, such as for foreign officials.⁶² The discretion to grant waivers varies depending on inadmissibility ground and each is evaluated on a case-by-case basis.⁶³

In addition to the inadmissibility grounds listed in section 212 of the INA, consular officers may deny foreign nationals a B-2 visa under section 214(b) of the INA.⁶⁴ Section 214(b) establishes a rebuttable presumption that every foreign national intends to remain in the United States on a permanent basis until proven otherwise to the satisfaction of the consular officer.⁶⁵ This presumption is the “most common basis for rejecting nonimmigrant visa applications.”⁶⁶

State Department Policies

State’s Foreign Affairs Manual (“FAM”) provides guidance to consular officers regarding the issuance of B-2 visas.⁶⁷ The FAM is the “Department’s single, comprehensive, and authoritative source for the Department’s organization structures, policies, and procedures that govern the operations of the State Department, the Foreign Service, and, when applicable, other federal agencies.”⁶⁸ This guidance ensures consular officers adjudicate B visa applications according to specific criteria developed by the State Department’s immigration attorneys.⁶⁹

When assessing applications for temporary visitors, consular officers must consider whether the applicant: (1) has residence in a foreign country which the applicant intends to retain; (2) intends to visit the United States for only a limited time period; and (3) seeks admission for legal activities involving business or pleasure.⁷⁰ If an applicant does not meet one or more of these requirements, consular officers “must refuse the applicant under [section 214(b) of the INA].”⁷¹

As it relates to B-2 visitors for pleasure, permissible criteria includes:

- tourism;
- family visits;

⁶² Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 212, 66 Stat. 182 (1952) (codified at 8 U.S.C. § 1182).

⁶³ *Id.*

⁶⁴ Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 214(b), 66 Stat. 189 (1952) (codified at 8 U.S.C. § 1184).

⁶⁵ *Id.*

⁶⁶ JILL H. WILSON, CONG. RESEARCH SERV., R45040, IMMIGRATION: NONIMMIGRANT (TEMPORARY) ADMISSIONS TO THE UNITED STATES 4 (2019).

⁶⁷ Letter from Mary Elizabeth Taylor, U.S. Dep’t of State, Assistant Secretary Bureau of Legislative Affairs to Sen. Rob Portman (Feb. 14, 2019).

⁶⁸ *Id.*

⁶⁹ 9 FAM 402.2-2(B).

⁷⁰ *Id.*

⁷¹ *Id.*

- participation in social events;
- armed forces dependents;
- most courses of study;
- amateur entertainers & athletes; and
- medical treatment.⁷²

If an applicant seeks travel for medical reasons, consular officers “must be satisfied that a medical practitioner in the United States has agreed to treat the applicant, and the applicant must provide information indicating the projected cost of treatment and any incidental expenses.”⁷³ Consular officers must also be satisfied that applicants have the ability and intent to pay for all medical treatment and expenses “including transportation and living expenses, doctors’ and hospitalization fees, as well as other medical and related expenses, either independently or with the pre-arranged assistance of others.”⁷⁴

To determine if an applicant meets these requirements, consular officers can request supporting documentation and evidence. For example, they can ask for “a medical diagnosis from a local physician, explaining the nature of the ailment and the reason the applicant seeks medical treatment in the United States.”⁷⁵ They can also request a letter from a U.S. doctor or hospital “stating that they are willing to treat the applicant’s specific ailment and detailing the projected length and cost of treatment, including doctors’ fees, hospitalization fees, and all medical-related expenses.”⁷⁶ Last, consular officers may request proof that the visitor’s expenses will be paid during their time in the United States.⁷⁷ To demonstrate sufficient funds, applicants can present a range of financial documents, including bank statements, investment statements, or certified copies of income tax returns.⁷⁸

Although birth tourist travel to the United States was previously permissible under the medical treatment category, in January 2020 State updated the FAM to include specific provisions on travel to give birth.⁷⁹ That FAM section states “visiting temporarily for pleasure does not include travel for the primary purpose of obtaining U.S. citizenship for a child by giving birth in the United States.”⁸⁰ If consular officers believe the applicant will give birth during her time in the United States, the applicant is “presumed to be traveling for the primary purpose of

⁷² 9 FAM 402.2-4(A).

⁷³ 9 FAM 402.2-4(A)(2).

⁷⁴ *Id.*

⁷⁵ 9 FAM 402.2-4(A)(2)(a).

⁷⁶ 9 FAM 402.2-4(A)(2)(b).

⁷⁷ 9 FAM 402.2-4(A)(2)(c).

⁷⁸ *Id.*

⁷⁹ 9 FAM 402.2-4(A)(8).

⁸⁰ *Id.*

obtaining U.S. citizenship for the child.”⁸¹ This rebuttable presumption can be overcome if the applicant establishes some other legitimate purpose for the travel.⁸²

The FAM does, however, limit a consular officer’s ability to determine when an applicant’s primary reason for visiting is to give birth. For instance, officers are instructed not to directly “ask a visa applicant whether they are pregnant unless [they] have a specific articulable reason to believe [the applicant] may be pregnant and planning to give birth in the United States.”⁸³ The FAM explicitly prohibits officers from asking female applicants if they are pregnant or otherwise requesting information demonstrating they are not pregnant.⁸⁴

Beyond those limitations, the FAM provides several circumstances under which the presumption described above is overcome. One example is when an applicant travels to visit a dying family member and the applicant’s due date happens to overlap.⁸⁵ The presumption can also be overcome by a complicated pregnancy requiring specialized medical care that is not presently “available in or near the country where the applicant resides.”⁸⁶

Nevertheless, just because an applicant arranges a birth plan with a U.S. doctor or otherwise indicates she prefers to give birth in the United States, that “is not sufficient to rebut the presumption that [the applicant’s] primary purpose of travel is obtaining U.S. citizenship for the child.”⁸⁷ Under the FAM, the key consideration for consular officers in these situations is “whether the applicant has access to reasonable medical care in or near the country where the applicant resides.”⁸⁸

CBP Inspection Process

After State issues a visa to a nonimmigrant traveler, CBP screens all air passengers traveling to the United States.⁸⁹ To facilitate these checks, commercial airlines transmit Passenger Name Record (“PNR”) data to CBP 72 hours before the passenger’s flight.⁹⁰ Moreover, when nonimmigrant travelers check in for their international flight, airlines send passenger and crew manifests to CBP for

⁸¹ *Id.*

⁸² *Id.*

⁸³ 9 FAM 402.2-4(A)(8)(a).

⁸⁴ *Id.*

⁸⁵ 9 FAM 402.-4(A)(8)(d).

⁸⁶ 9 FAM 402.-4(A)(8)(c).

⁸⁷ 9 FAM 402.-4(A)(8)(e).

⁸⁸ *Id.*

⁸⁹ AUDREY L. SINGER, CONG. RESEARCH SERV., R43356, BORDER SECURITY: IMMIGRATION INSPECTIONS AT PORTS OF ENTRY 9 (2015).

⁹⁰ *Id.*

additional vetting.⁹¹ This biographic data is submitted to CBP’s Advance Passenger Information System (“APIS”).⁹² APIS houses the passenger information from inbound flights used to “identify high-risk and inadmissible passengers.”⁹³

Once CBP receives the PNR and APIS data, it is sent to its National Targeting Center (“NTC”) where passengers “are vetted against intelligence and law enforcement databases.”⁹⁴ This includes checks against terrorist watch lists.⁹⁵ If NTC identifies a match, it can issue no-board recommendations to the airline or flag passengers for secondary inspection upon arrival in the United States.⁹⁶

In addition to the NTC, CBP’s Immigration Advisory Program (“IAP”) authorizes officers to similarly review documents and conduct interviews to identify high-risk travelers.⁹⁷ The IAP posts officers at eleven airports in nine different countries.⁹⁸ Officers participating in this program lack enforcement authority, but can make no-board recommendations and flag passengers for secondary inspection.⁹⁹ Officers serve only as advisors to partner nations and “hold no authority while working in the host country.”¹⁰⁰

Once travelers arrive in the United States, CBP officers confirm they are entitled to enter the United States.¹⁰¹ At the same time, biographic information on the passenger is fed into CBP’s TECS system.¹⁰² TECS checks “travelers against law enforcement and national security watchlists and . . . [records] and [reports] on primary and secondary inspection results.”¹⁰³

Beyond these checks, upon entry all non-citizens must also submit biometric data including fingerprints and photographs.¹⁰⁴ If these examinations trigger no red flags, travelers are granted entry.¹⁰⁵ If an officer has suspicions surrounding the admissibility of a passenger, the officer can conduct secondary inspections.¹⁰⁶

⁹¹ *Id.* at 9–10.

⁹² *Id.* at 10.

⁹³ *Id.* at 8.

⁹⁴ *Id.* at 10.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ U.S. CUSTOMS & BORDER PROTECTION, U.S. DEP’T OF HOMELAND SEC., *Fact Sheet: Immigration Advisory Program*, <https://www.cbp.gov/sites/default/files/assets/documents/2017-Jul/fieldops-immigration-advisory-program-may2013-20170721.pdf>.

¹⁰¹ AUDREY L. SINGER, CONG. RESEARCH SERV., R43356, BORDER SECURITY: IMMIGRATION INSPECTIONS AT PORTS OF ENTRY 10 (2015).

¹⁰² *Id.*

¹⁰³ *Id.* at 8.

¹⁰⁴ *Id.* at 11.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

This suspicion can stem from a high Automated Targeting System (“ATS”) score, or negative information found by CBP officers in TECS.¹⁰⁷ General suspicious behavior, responses, or documents may also trigger additional examinations.¹⁰⁸ A small percentage of arriving travelers are also selected at random for secondary inspection.¹⁰⁹

In years past, nonimmigrant visitors filled out an I-94 form upon arrival in the United States.¹¹⁰ That form contained the visitor’s date of admission, admission class, and visa expiration date.¹¹¹ The I-94 form helped CBP identify individuals overstaying their visas.¹¹² Nonetheless, the collection of these forms proved ineffective because they were often not collected from travelers as they exited the country.¹¹³

Today, electronic I-94 forms are only issued at land border points of entry.¹¹⁴ For air and sea arrivals, CBP automatically gathers arrival and departure information from its electronic records.¹¹⁵ Due to these changes, information regarding a visitor’s departure from the United States is now recorded electronically through CBP’s review of flight manifests provided by the airlines.¹¹⁶ Beyond the added accuracy of the electronic method, “this automation streamlines the process for travelers, facilitates security and reduces federal costs.”¹¹⁷

During secondary inspection, travelers must undergo several additional vetting procedures. These include extensive interviews, physical searches, and fingerprinting.¹¹⁸ During these examinations, the burden is on the visitor to establish they are eligible to be admitted to the United States.¹¹⁹ In particular, travelers “must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal” under the laws of the United States.¹²⁰ If a visitor is found inadmissible, they are

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 12.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 12.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Arrival/Departure Forms: I-94 and I-94W*, U.S. CUSTOMS & BORDER PROTECTION, U.S. DEP’T OF HOMELAND SEC., (Apr. 30, 2019), <https://cbp.gov/travel/international-visitors/i-94>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ AUDREY L. SINGER, CONG. RESEARCH SERV., R43356, BORDER SECURITY: IMMIGRATION INSPECTIONS AT PORTS OF ENTRY 12 (2015).

¹¹⁹ 8 C.F.R. § 235.1(f).

¹²⁰ *Id.*

normally removed in one of four ways: withdrawal of application, standard removal, expedited removal, and criminal arrest.¹²¹

When an application for admission is withdrawn, “the alien’s decision to withdraw his or her application for admission must be made voluntarily, but nothing in this [regulation] shall be construed as to give an alien the right to withdraw his or her application for admission.”¹²² Moreover, “permission to withdraw an application for admission should not normally be granted unless the alien intends and is able to depart the United States immediately.”¹²³

Under standard removal proceedings, written notice must be provided to the applicant.¹²⁴ That notice, among other things, must specify: (1) the nature of the proceedings against the alien; (2) the alleged unlawful conduct; and (3) the charges brought against the alien.¹²⁵ Prior to removal, an alien is entitled to a hearing before an immigration judge.¹²⁶ During this hearing, the alien is entitled to representation by counsel, but not at the government’s expense.¹²⁷ The alien also has the reasonable opportunity “to examine the evidence against [them], to present evidence on the [their] own behalf, and to cross-examine witnesses presented by the Government.”¹²⁸

Foreign travelers lacking appropriate documents or who present fraudulent information may be subject to expedited removal.¹²⁹ Expedited procedures allow CBP to “order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or [articulates] a fear of persecution.”¹³⁰

Last, CBP officers have the authority to arrest aliens upon the discovery of an outstanding warrant for their arrest.¹³¹ Under this authority, USCIS operates the Criminal Alien Tracking Center which assists “Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to

¹²¹ AUDREY L. SINGER, CONG. RESEARCH SERV., R43356, BORDER SECURITY: IMMIGRATION INSPECTIONS AT PORTS OF ENTRY 14–15 (2015).

¹²² 8 C.F.R. § 235.4.

¹²³ *Id.*

¹²⁴ Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 239, 66 Stat. 166 (1952) (codified at 8 U.S.C. § 1229(a)).

¹²⁵ *Id.*

¹²⁶ Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 240, 66 Stat. 166 (1952) (codified at 8 U.S.C. § 1229(a)).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 235, 66 Stat. 166 (1952) (codified at 8 U.S.C. § 1225).

¹³⁰ *Id.*

¹³¹ Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 236, 66 Stat. 166 (1952) (codified at 8 U.S.C. § 1226).

removal by reason of their conviction of aggravated felonies, . . . not lawfully present in the United States, or otherwise removable.”¹³²

IV. State Department Policies Governing Birth Tourism

Starting in 2014, several changes to State Department policy made birth tourism more accessible.¹³³ The first of these changes came in November 2014 when the United States and China entered a ten-year reciprocal visa agreement.¹³⁴ Before this agreement, visas issued to Chinese citizens only lasted for one year.¹³⁵ Subsequently, a February 2015 State Department cable to all consular offices explained consular officers should not deny visa applicants solely because they planned to travel to the United States to obtain citizenship for their child, and that birth tourists should be treated like other medical visa applicants.¹³⁶

In a 2019 letter to the Committee, the State Department downplayed the impact of the February 2015 cable.¹³⁷ The Department stated it “has not made any substantial changes since 2009 to its guidance on the permissibility of visa issuance for medical travel.”¹³⁸ The Department also said “the sole change to the relevant FAM provision was made on December 28, 2017, explicitly instructing officers to examine an applicant’s means to pay for treatment in determining eligibility for a visa.”¹³⁹

A. State Department Cables Related to Birth Tourism

February 2015 Cable

On February 20, 2015, the State Department issued a cable to all diplomatic and consular posts regarding visa adjudication for birth tourism cases.¹⁴⁰ The February 2015 cable reiterated “travel to seek medical treatment, including giving birth, is legally permissible using a B visa.”¹⁴¹ The cable furthermore acknowledged “many foreign nationals purposefully seek out the world-class medical care available in the United States, and individuals traveling to the United States solely to obtain U.S. citizenship for their newborn children are not in violation of any

¹³² *Id.*

¹³³ Briefing with U.S. Immigr. & Customs Enforcement Homeland Security Investigations (Dec. 4, 2018).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ U.S. Dep’t of State Letter to the Committee (Feb. 14, 2019) (on file with the Committee).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ U.S. Dep’t of State, Visa Adjudication Guidance for Birth Tourism Cases 1 (Feb. 20, 2015).

¹⁴¹ *Id.*

law.”¹⁴² Most importantly, the cable clarified that “those traveling for the purpose of giving birth should be evaluated in the same manner as applicants traveling for other medical purposes.”¹⁴³

In situations where applicants directly stated their intention to travel to the United States to give birth, the cable specified it was reasonable for consular officers “to request proof of her ability to pay for the treatment, which could include doctors’ and hospitalization fees as well as other medical and related expenses.”¹⁴⁴ If it became clear the applicant could not provide for those costs “without resorting to unlawful employment,” the cable indicated refusal under INA section 214(b) was appropriate.¹⁴⁵

The cable concluded with a discussion of how to properly apply INA ineligibilities.¹⁴⁶ On this point, the cable instructed, “no visa applicant can be found inadmissible solely on the basis of a plan to give birth in the United States.”¹⁴⁷ Moreover, it specified that an applicant’s prior receipt of Medicaid or other government benefits should not result in an automatic ineligibility under the INA.¹⁴⁸ The cable did, however, point out that past “receipt of public benefits does justify greater scrutiny of an applicant’s present intent and possible qualifications of 214(b).”¹⁴⁹

When asked by the Committee how the 2015 cable impacted potential birth tourist visitors, State officials responded “that the cable did not prevent consular officers from denying visa applicants intending to give birth in the United States.”¹⁵⁰ State instead maintained that the cable “instruct[ed] officers to evaluate these applicants in the same manner as applicants traveling for other medical purposes.”¹⁵¹ In a subsequent call with Committee staff, the Department reiterated its position that the cable did not represent a policy change with respect to birth tourism when issued in 2015.¹⁵² Nevertheless, State officials were not able to speak to the motivation behind the cable.¹⁵³ According to the officials, the cable represented the maintenance of the status quo as it relates to birth tourism.¹⁵⁴

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ U.S. Dep’t of State Letter to the Committee (Feb. 14, 2019) (on file with the Committee).

¹⁵¹ *Id.*

¹⁵² Committee call with the U.S. Dep’t of State (Dec. 13, 2019).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

The impact of this cable, however, has not been consistent across the U.S. Government. Since its release, the U.S. Immigration and Customs Enforcement’s Homeland Security Investigations (“HSI”) has struggled to prosecute birth tourist visa fraud cases previously predicated on an applicant’s false statements regarding the purpose of their visit.¹⁵⁵ Because travel to give birth was treated like all other forms of medical travel, birth tourists no longer had to misrepresent the purpose of their visit.¹⁵⁶ Due to this change, and without the ability to bring visa fraud cases, HSI had to shift their focus to the fraudulent and illegal business practices of birth tourism companies.¹⁵⁷

March 2016 Cable

Following the November 2014 announcement of the ten-year multi-entry visa agreement, “the governments of the United States and China mutually recognized that the United States would require Chinese citizens to periodically and electronically update biographical information submitted in their original visa applications.”¹⁵⁸ The cable hailed the B visa extension as “a milestone in the diplomatic relations between the United States and China, and reflects the continued deepening of people-to-people ties between our two nations.”¹⁵⁹

The cable required ten-year B visa holders to update all biographical information prior to their initial trip to the United States and then every two years thereafter or if they obtained a new passport.¹⁶⁰ All visitor information was to be stored in the Electronic Visa Update System (“EVUS”) managed by CBP.¹⁶¹

Once EVUS was operational, the cable stated all “Chinese 10-year B visa holders, regardless of issuance date, who have not enrolled in EVUS will not be permitted to board a plane to the United States.”¹⁶² Failure to update biographical information as required by the cable did not carry significant consequences as travelers could correct these omissions at any time prior to travel.¹⁶³

The EVUS rollout coincided with the United States-China Tourism Year. This was “an initiative designed to expand and shape travel between [the two] countries, support progress on market access, and advance initiatives for both the United States and China to ensure a quality visitor experience for increasing

¹⁵⁵ Briefing U.S. Immigr. & Customs Enforcement Homeland Security Investigations (Dec. 4, 2018).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ U.S. DEP’T OF STATE, NEW REQUIREMENTS FOR CHINESE B VISA HOLDERS 1 (Mar. 11, 2016).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* at 1–2.

¹⁶³ *Id.* at 2.

numbers of travelers.”¹⁶⁴ The cable noted a smooth rollout of EVUS was necessary to prevent any disruption to Chinese tourist travel to the United States.¹⁶⁵

With ten-year multi-entry visas, Chinese citizens were no longer required to undergo annual interviews upon entry into the United States. When asked by the Committee about the impact of the B visa extension, the Department responded “we are not tracking birth tourists” meaning State does not have a clear picture of how prevalent birth tourism is in the United States.¹⁶⁶ When asked if State thought the EVUS system served as a sufficient proxy for annual interviews, Department officials said they defer to CBP on whether the system does a good job of maintaining accurate visa holder information.¹⁶⁷

December 2018 Cable

In December 2018, State issued updated guidance on birth and medical tourism cases.¹⁶⁸ This cable took a stronger tone summarizing that all visa applicants seeking medical care, including birth tourists, “must demonstrate . . . that they had the means and intent to pay for all treatment-related costs.”¹⁶⁹

Much like the 2015 cable, the updated guidance stipulated that a visa applicant’s ability to pay included doctor and hospitalization costs as well as living expenses for the duration of their stay.¹⁷⁰ To determine ability and intent, consular officers could request bank documents, insurance arrangements, and other financial documents.¹⁷¹ According to the cable, this evaluation could “also include checking and confirming the bona fides of service companies, health providers, and hospitals in the United States identified by the applicant.”¹⁷²

If consular officers identified an applicant who previously failed to pay for medical expenses while in the United States, the cable instructed officers to “consider a line of questions appropriate for determining the applicant’s credibility and intent to engage in potentially unlawful activity or otherwise evade payment of future medical expenses in the United States.”¹⁷³ Nevertheless, the cable clarified

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Committee call with the U.S. Dep’t of State (Dec. 13, 2019).

¹⁶⁷ *Id.*

¹⁶⁸ U.S. DEP’T OF STATE, UPDATED ADJUDICATION GUIDANCE ON BIRTH AND MEDICAL TOURISM CASES 1 (Dec. 1, 2018).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 2.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

that a previous unpaid medical bill alone was not sufficient grounds for visa denial.¹⁷⁴

The cable concluded with the instruction to consider denials under INA section 214(b) prior to INA section 212(a)(4)'s public charge.¹⁷⁵ This was because section 214(b) "applies equally to all B visa applicants, regardless of purpose of travel."¹⁷⁶

State indicated that the 2018 cable did not represent a policy change but instead was issued as part of the Department's efforts to promote consistency in the visa adjudication process.¹⁷⁷ At the same time, State noted the 2018 cable's reiteration that birth tourism is not prohibited under the INA.¹⁷⁸ Officials also highlighted the cable's strengthened language regarding inadmissibilities for public charge.¹⁷⁹

During a conference call with the Department, Committee staff asked several questions surrounding State's procedures for validating financial documents presented by visa applicants.¹⁸⁰ The Department informed the Committee that State's Fraud Prevention Unit at consulates evaluate the validity of bank documents presented during applicant interviews.¹⁸¹ State, however, does not have a strong relationship with Chinese banks, and so confirming the authenticity of these documents is difficult.¹⁸² As a result, the Department tries to rely on applicant interviews instead of documents.¹⁸³ As an alternative to financial statements, consular officers attempt to determine an applicant's income by asking questions like what kind of car they drive.¹⁸⁴ Nevertheless, when an applicant presents financial documents during interviews, State does not retain or otherwise scan them into a database.¹⁸⁵ The Department did note that consular officers sometimes take notes for visa applicant files, but this is often reserved for medical emergencies.¹⁸⁶

When asked by the Committee if the Department felt there were national security risks associated with birth tourism, State officials said they were hesitant

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 3.

¹⁷⁶ *Id.*

¹⁷⁷ U.S. Dep't of State Letter to the Committee (Feb. 14, 2019) (on file with the Committee).

¹⁷⁸ *Id.*

¹⁷⁹ Committee call with the U.S. Dep't of State (Dec. 13, 2019).

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

to answer the question and thought DHS is a better group to speak to this point.¹⁸⁷ State officials did say they were unaware of any particular threats, but they could see some risk down the road where individuals would have access to sensitive national security jobs.¹⁸⁸

B. 2020 Rule Change

Just over a month after a Committee call with the State Department, State amended its regulation governing B visas.¹⁸⁹ The amended rule “establishes that travel to the United States with the primary purpose of obtaining U.S. citizenship for a child by giving birth in the United States is an impermissible basis for the issuance of a B nonimmigrant visa.”¹⁹⁰ The Department justified the change saying it “does not believe that visiting the United States for the primary purpose of obtaining U.S. citizenship for a child by giving birth in the United States . . . is a legitimate activity for pleasure or of a recreational nature, for purposes of consular officers adjudicating applications for B nonimmigrant visas.”¹⁹¹ Last, the new rule creates a rebuttable presumption that the primary purpose of an applicant’s visit is to secure U.S. citizenship for the child if a consular officer has reason to believe the applicant will give birth in the United States.¹⁹²

The new rule limits the definition of “pleasure” to “legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or services nature.”¹⁹³ It does not, however, include travel to secure U.S. citizenship for a child.¹⁹⁴ The new rule also includes strengthened language on medical travel in general. For instance, a new provision “provides that a nonimmigrant B visa applicant seeking medical treatment in the United States shall be denied a visa under INA section 214(b) . . . if [they are] unable to establish, to the satisfaction of a consular officer, a legitimate reason why he or she wishes to travel to the United States for medical treatment.”¹⁹⁵ In addition to having a legitimate reason for medical travel, the applicant must demonstrate the means and intent to pay for all treatment costs and incidental expenses while in the United States.¹⁹⁶

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*; Visas: Temporary Visitors for Business or Pleasure, 85 Fed. Reg. 4,219–4,225 (Jan. 24, 2020) (codified at 22 C.F.R. pt. 22).

¹⁹⁰ Visas: Temporary Visitors for Business or Pleasure, 85 Fed. Reg. 4,219–4,225 (Jan. 24, 2020) (codified at 22 C.F.R. pt. 41).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

In its public notice regarding the rule change, the Department said visits “for pleasure” is an ambiguous category under the INA which previously could be interpreted to permit birth tourism.¹⁹⁷ State “concluded that a more reasonable interpretation of the statutory provision and a better policy is that the statutory provision authorizing the issuance of visas to temporary visitors for pleasure does not extend to individuals whose primary purpose of travel is to obtain U.S. citizenship for a child.”¹⁹⁸ State clarified that it “considers birth tourism an inappropriate basis for the issuance of temporary visitor visas.”¹⁹⁹

The Department was careful to point out that the change does not impact B visas for specialized and legitimate medical travel.²⁰⁰ Instead, according to the Department, the “rule seeks to balance the United States’ strong interest in curtailing birth tourism with its interests in facilitating legitimate medical travel.”²⁰¹

In further discussing reasons for the rule change, the Department identified national security and law enforcement concerns with birth tourism.²⁰² State estimates that thousands of children are born to B visa visitors on an annual basis.²⁰³ This estimate is based on reports from U.S. embassies and consulates which have observed an increasing number of B visa applicants listing child birth as their primary purpose for travel to the United States.²⁰⁴

One national security risk identified by the Department is the potential for enhanced hostile actor access to the United States.²⁰⁵ In particular, State said “permitting short-term visitors with no demonstrable ties to the United States to obtain visas to travel to the United States primarily to obtain U.S. citizenship for a child creates a potential long-term vulnerability for national security.”²⁰⁶ This change, therefore, sought to close that potential national security vulnerability.²⁰⁷

To highlight the issues associated with birth tourism, the Department contrasted the numerous requirements a foreign national seeking naturalization

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Committee call with the U.S. Dep’t of State (Dec. 13, 2019); Visas: Temporary Visitors for Business or Pleasure, 85 Fed. Reg. 4,219–4,225 (Jan. 24, 2020) (codified at 22 C.F.R. pt. 41).

²⁰³ Visas: Temporary Visitors for Business or Pleasure, 85 Fed. Reg. 4,219–4,225 (Jan. 24, 2020) (codified at 22 C.F.R. pt. 41).

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

must satisfy with those of a birth tourist child.²⁰⁸ The steps for naturalizing are extensive and include establishing:

attachment to the principles of the Constitution of the United States and favorable disposition toward the “good order and happiness” of the United States, including a depth of conviction that would lead to active support of the Constitution, and not be hostile to the basic form of government of the United States, or disbelieve in the principles of the Constitution.²⁰⁹

As a result, when foreign nationals obtain citizenship as birth tourists, they “are able to help that child avoid the scrutiny, standards, and procedures that he or she would normally undergo if he or she sought to become a U.S citizen through naturalization.”²¹⁰

State also acknowledged the previous regulation’s failure “to address the national security vulnerability that could allow foreign governments or entities to recruit or groom U.S. citizens who were born as the result of birth tourism and raised overseas, without attachment to the United States, in manners that threaten the security of the United States.”²¹¹ This demeans the naturalization process of foreign nationals who demonstrate a clear and present intent to meaningfully contribute to American society.

V. Data on Birth Tourism in the United States

During a call with Committee staff, the State Department said it does not comprehensively track birth tourism.²¹² This includes the Department’s Consular Consolidated Database (“CCD”) which is “a data warehouse that holds current and archived data from the Bureau of Consular Affairs domestic and post databases.”²¹³ CCD was created to provide “a near real-time aggregate of the consular transaction activity collected domestically and at post databases worldwide.”²¹⁴

According to the Department, it has no business interest in tracking birth tourism information, and it would require a legal justification to do so.²¹⁵ Officials did point out, however, that there is a question on visa applications that asks for

²⁰⁸ *Id.*

²⁰⁹ *Id.* (citing 8 U.S.C. § 1427(a); 8 C.F.R. 361.11(a)).

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² Committee call with the U.S. Dep’t of State (Dec. 13, 2019).

²¹³ *Id.*; U.S. DEP’T OF STATE, PRIVACY IMPACT ASSESSMENT: CONSULAR CONSOLIDATED DATABASE (Jul. 17, 2015).

²¹⁴ U.S. DEP’T OF STATE, PRIVACY IMPACT ASSESSMENT: CONSULAR CONSOLIDATED DATABASE (Jul. 17, 2015).

²¹⁵ Committee call with the U.S. Dep’t of State (Dec. 13, 2019).

the general purpose of the travel.²¹⁶ But, State said there is currently no way to disaggregate birth tourism from the larger medical travel subset.²¹⁷

Although not specific to tracking birth tourism, CBP’s TECS system does contain information on birth tourists. TECS is the “principal system used by officers at the border to assist with screening and determinations regarding admissibility of arriving persons.”²¹⁸

To get a sense of the most common features of the birth tourism industry in the United States, the Committee reviewed approximately 3,000 TECS narratives referencing “birth tourism” from 2015 to 2020. During that review, several trends emerged, including substantial cash declarations, return visits, and significant adjustments for total hospital costs incurred.

Significant Cash Declarations. TECS entries discussing travel for birth tourism often document the significant cash declarations made by prospective birth tourists. The amount of these declarations ranged from several thousand dollars to several hundred thousand dollars.²¹⁹ Nevertheless, the most common cash declaration ranged from \$20,000 to \$50,000.²²⁰

Below are examples of large cash declarations made by birth tourists during the timeframe reviewed by the Committee:

Date	Narrative
10.01.15	SUBJECT IS A PHYSICIAN IN CHINA TRAVELING WITH WIFE (7 MONTHS PREGNANT). THEY ARE PLANNING TO HAVE THE 2ND CHILD ADDITIONAL COMMENTS BIRTH TOURISM. HIS WIFE AND PARENTS IN LAW ARE SCHEDULED TO RETURN TO CHINA IN DECEMBER 2015. HE WILL STAY 1 WEEK AND RETURN TO CHINA TO RESUME WORK. DECLARED \$60,000 CASH. COUPLE IS FULLY AWARE THAT THEY ARE RESPONSIBLE FOR ALL THE FINANCIAL FEE ASSOCIATED. ²²¹
05.06.16	SUBJECT IS TRAVELING WITH HER HUSBAND FOR BIRTH TOURISM WITH RETURN TICKET FOR 08/03/2016. SUBJECT AND HER HUSBAND ADDITIONAL COMMENTS DISCLOSED THEIR INTENT TO AMCON, AND NOTES REFLECT SUCH IN CCD. SUBJECTS HUSBAND

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ U.S. DEP’T OF HOMELAND SEC., DHS/CBP/PIA-009(A), PRIVACY IMPACT ASSESSMENT UPDATE FOR THE TECS SYSTEM: CBP PRIMARY & SECONDARY PROCESSING (TECS) NATIONAL SAR INITIATIVE (Aug. 5, 2011).

²¹⁹ FY15-ADMISSIONS-BIRTH_TOURISM_Redacted; FY16-ADMISSIONS-BIRTH_TOURISM_Redacted; FY17-ADMISSIONS-BIRTH_TOURISM_Redacted; FY18-ADMISSIONS-BIRTH_TOURISM_Redacted; FY19-ADMISSIONS-BIRTH_TOURISM_Redacted; FY20-ADMISSIONS-BIRTH_TOURISM_Redacted.

²²⁰ *Id.*

²²¹ FY16-ADMISSIONS-BIRTH_TOURISM_Redacted.

	IS TRAVELING WITH \$50,959.00 USD CASH. SUBJECTS HUSBAND WORKS IN ANHEUSER-BUSCH MANAGEMENT (SHANGHAI) CO. LTD. AS A INDUSTRIAL RELATIONS AND ADMINISTRATION CONSULTANT. ²²²
12.29.16	APPLICANT STATED THAT SHE WORKS AS AN ACCOUNTANT FOR THE CHINESE AEROSPACE SCIENCE&INDUSTRY FINANCE CORP IN PEKIN, CHINA, THAT SHE IS EXPECTING A TWIN (ADDITIONAL COMMENTS SECOND BABIES), THAT SHE WENT TO THE U.S EMBASSY AND HAS APPLIED FOR A B1/B2 VISA TO COME TO THE U.S TO DELIVER HER TWIN BABIES, IS CARRYING ABOUT \$50,000.00 CASH USD. ²²³
12.25.17	SUBJECT IS TRAVELING FOR BIRTH TOURISM RETURN TICKET FOR 03-23-2018. CCD VERIFIED, AND SUBJECT DISCLOSED BIRTH TOURISM INTENT. SUBJECT IS TRAVELING WITH \$155,000 USD CASH. ²²⁴
05.02.18	SUBJECT IS COMING FOR BIRTH TOURISM. VERIFIED FUNDS. TRAVELLING WITH \$120,000/ 1ST CHILD ALSO BORN IN USA, VERIFIED HOSPITAL RECEIPTS. ²²⁵
04.05.19	SUBJECT DISCLOSED INTENT FOR BIRTH TOURISM ON VISA APPLICATION, CARRYING \$301,400 USD FOR MEDICAL EXPENSES. ²²⁶

Return Visits. Beyond large cash declarations, many birth tourists traveled to the United States several times to secure citizenship for their children. According to the TECS entries reviewed by the Committee, tourists were willing to make numerous trips because of the superior educational and career opportunities available to United States citizens.²²⁷ In addition, prior failure to disclose intent to give birth in the United States did not foreclose future travel for the same purpose.²²⁸

The following TECS narratives provide examples of tourists who traveled to the United States on more than one occasion to attain citizenship for their children:

Date	Narrative
06.16.17	GOING FOR BIRTH TOURISM. ALREADY HAS TWO CHILDREN BORN IN THE US. PLANS TO GIVE BIRTH IN CALIFORNIA. HAS SISTER LIVING IN THE US. WILL GIVE BIRTH IN HOSPITAL CLOSE TO HER. BROUGHT PROOF OF PAYMENT AND HOSPITAL LETTERS FOR FIRST TWO CHILDREN. HUSBAND IS MILITARY OFFICER. B-2. ²²⁹

²²² *Id.*

²²³ FY17-ADMISSIONS-BIRTH_TOURISM_Redacted.

²²⁴ FY18-ADMISSIONS-BIRTH_TOURISM_Redacted.

²²⁵ *Id.*

²²⁶ FY19-ADMISSIONS-BIRTH_TOURISM_Redacted.

²²⁷ *Id.*

²²⁸ FY18-ADMISSIONS-BIRTH_TOURISM_Redacted.

²²⁹ FY16-ADMISSIONS-BIRTH_TOURISM_Redacted.

04.17.18	SUBJECT HAD DISCLOSED BIRTH TOURISM INTENT TO AMCON ON CURRENT (2ND) VISA ISSUED ON 03/30/2018 BUT SHE DID NOT DISCLOSE INTENT ON FIRST VISA IN 2014. AMCON-SHENYANG WAS AWARE OF HER BIRTH TOURISM FOR BOTH TRIPS AND PROMPTLY ISSUED HER A VISA. SUBJECT SAID SHE DID NOT REALIZE SHE CAN DECLARE BIRTH TOURISM INTENT TO AMCON TO OBTAIN HER VISA BUT ONCE SHE FOUND OUT SHE DECIDED TO BE HONEST THIS TIME. SUBJECT STATED SHE DID NOT USE PUBLIC BENEFITS ON FIRST DELIVERY IN 2014. THE AMOUNT SHE PAID \$5K WAS THE CASH PAYMENT RATE CHARGED BY HOSPITALS TO THOSE WITHOUT HEALTH INSURANCE. ²³⁰
09.27.18	DISCLOSED BIRTH TOURISM. BABY BORN IN 2017. COMING TO HAVE 2ND US BABY. 2ND BABY DUE 11/07/2018. WILL DELIVER AT SOUTH COAST GLOBAL MEDICAL CENTER. SUBJECT PRESENTED RECEIPTS FROM 1ST BIRTH. RECEIVED \$27K ASDJUSTMENT. PAID CASH FLAT RATE. ²³¹
04.02.19	THE SUBJECT IS TRAVELING SPECIFICALLY FOR BIRTH TOURISM. SHE PROVIDED BILLINGS AND PROOF OF INCOME. THE SUBJECT 1ST CHILD WAS BORN IN THE UNITED STATES THE SUBJECT PROVIDED A LIMITED BILLING INDICATED THEY PAID ONLY 3600USD FOR BIRTH AND HOSPITAL VISIT ON TOP OF DISCOUNTS. THE SUBJECT WAS NOT ABLE TO PROVIDE WHAT THE DISCOUNTS WAS. THEY FAILED TO OVERCOME THE BELIEF THEY USED PUBLIC BENEFITS. ²³²
05.23.19	BIRTH TOURISM, TRAVELING WITH HUSBAND, MOTHER AND FIRST USC CHILD. WILL RETURN IN THE END OF JULY WITH A RETURN TICKET TO DEPART. GAVE BIRTH TO FIRST CHILD IN 2016 FOR THE PURPOSE OF GETTING BETTER EDUCATION AND JOB OPPORTUNITY FOR CHILD. PRESENTED HOSPITAL INVOICE WITH THE TOTAL OF \$9000 BUT PAID \$2900 WITH AN ADJUSTMENT. STATED THEY HAVE MONEY AND DO NOT NEED DISCOUNT FROM THE HOSPITAL. ²³³

Medical Bill Adjustments. A final trend worth noting is the significant adjustments many birth tourists had deducted from their total medical bills and covered by the state health care system or Medicaid. In numerous cases, the Committee identified instances where tourists received adjustments exceeding well over \$25,000.²³⁴ In some cases, the state where the child was born paid the difference between the total cost incurred by the tourist and their cash payment.²³⁵

²³⁰ FY18-ADMISSIONS-BIRTH_TOURISM_Redacted.

²³¹ *Id.*

²³² FY19-ADMISSIONS-BIRTH_TOURISM_Redacted.

²³³ *Id.*

²³⁴ FY17-ADMISSIONS-BIRTH_TOURISM_Redacted; FY18-ADMISSIONS-BIRTH_TOURISM_Redacted; FY19-ADMISSIONS-BIRTH_TOURISM_Redacted.

²³⁵ FY17-ADMISSIONS-BIRTH_TOURISM_Redacted; FY19-ADMISSIONS-BIRTH_TOURISM_Redacted.

On more than one occasion, the tourists were unable to explain why they received such large adjustments.²³⁶

Below are examples of birth tourists who paid far less than the total costs incurred:

Date	Narrative
05.25.17	PAID GARFIELD MEDICAL CENTER HOSPITAL \$6,125 ON A CHARGE OF \$56,510. RECEIVED ADJUSTMENT FOR PAYING CASH. TYPICAL OF BIRTH TOURISM FINANCIAL ARRANGEMENTS. ²³⁷
12.28.17	DISCLOSED BIRTH TO AMCON SECOND CHILD - ADMITTED B2 ADVISED NOT TO TAKE DISCOUNT AND PROVIDE PROOF OF PAYMENT - PAX ACQUIRED 20K DISCOUNT ON LAST CHILD AND ONLY PAID 3K - WARNED NOT TO REPEAT FRAUD. ²³⁸
02.02.18	SUBJECT PROVIDED ITEMIZED BILL FOR BIRTH FROM GARFIELD MEDICAL CENTER. SUBJECT RACKED UP A BILL OF \$52,160 FOR THE CHILD BIRTH. SUBJECT RECEIVED AN ADJUSTMENT OF \$46,810. PAID A FLAT RATE OF \$5,350. SUBJECTS US-BORN SON ALSO HAD TO GO TO HOSPITAL AT 19 DAYS OLD FOR ILLNESS. BILL WAS FOR \$16,758.53. PAID CASH DISCOUNT OF \$6,055.00. ²³⁹
04.18.18	GAVE BIRTH AT POMONA VALLEY HOSPITAL MEDICAL CENTER EMPLOYING THE SERVICES OF FEMCARE MEDICAL ASSOCIATES, INC. SUN PROVIDED RECEIPTS INDICATING THAT SERVICES WERE PROVIDED FROM AUGUST 15, 2017 TO AUGUST 17, 2017. THE TOTAL CHARGES FOR THE BIRTH WAS \$62,139.40; TOTAL ADJUSTMENTS WERE \$55,139.40 WHICH LEFT LEFT A BALANCE OWING OF \$7,000.00. THE RECEIPT INDICATED A CASH PAYMENT WAS MADE FOR THE \$7K BALANCE ON AUGUST 31, 2017. ²⁴⁰
10.23.18	SUBJECT ALSO PRESENTED A DOCUMENT SHOWED THE TOTAL CHARGE WAS \$39,473.75, AND TOTAL ADJUSTMENTS \$33,373.75, TOTAL PAYMENT \$6100, TOTAL BALANCE \$0. SUBJECT NOT ABLE TO EXPLAIN WHERE IS THE ADJUSTMENT \$33,373.75 CAME FROM , WHY DID SHE GET THE ADJUSTMENT. SUBJECT WAS ADVISED NEED TO GET FULL , COMPLETE AND CORRECT DOCUMENTS FROM HOSPITAL, TRAVEL WITH HER FOR THE FUTURE TRIP INSPECTION, AND PAID OFF THE AMOUNT WAS ADJUSTED OR EXPLAIN THE REASON WHO PAID THE ADJUSTMENT AMOUNT \$33,373.75. ²⁴¹
07.02.19	SUBJECT COMING TO THE US FOR BIRTH TOURISM FOR THE SECOND TIME. ON HER FIRST VISIT SUBJECT HAD A BABY IN CA

²³⁶ FY16-ADMISSIONS-BIRTH_TOURISM_Redacted; FY18-ADMISSIONS-BIRTH_TOURISM_Redacted.

²³⁷ FY17-ADMISSIONS-BIRTH_TOURISM_Redacted

²³⁸ FY18-ADMISSIONS-BIRTH_TOURISM_Redacted.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ FY19-ADMISSIONS-BIRTH_TOURISM_Redacted.

	AND PAID ABOUT \$4,000 OUT OF AN APPROXIMATE \$34,000 HOSPITAL BILL. THE STATE OF CA APPARENTLY PAID OFF THE REMAINING BALANCE. MOREOVER, SOMEHOW THIS DOES NOT CONSTITUTE A PUBLIC CHARGE. THEREFORE, SUBJECT WILL BE DULY ADMITTED AS A B-2 TOURIST. ²⁴²
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VI. Process & Online Presence of Birth Tourism Companies

To illustrate how prospective birth tourists plan trips to the United States, the section below examines the websites and procedures of two birth tourism companies. According to corporate filings and interviews conducted by Committee staff, both companies have since discontinued operations.²⁴³ The first, was based in California, primarily catered to Chinese clients; the other operated in Florida and worked predominately with Russian customers. The examination of each website discusses pricing, visa consultation services, housing and recreational activities, and healthcare services.

A. Ada International

1. Company Description and Pricing

Ada International or US Baby Ada’s (“Ada”) website described the company as “a professional confinement center directly operated in the United States” and “responsible for the delivery and confinement services of customers going to the United States.”²⁴⁴ Most of the company’s staff was said to have actual operational experience in the United States.²⁴⁵ According to the website, the company’s founder, “Ada Dad,” “is the most well-known visa expert in the industry and is familiar with . . . legal policies.”²⁴⁶

The website had a page entitled “Having a Child Process” outlining the steps a birth tourist must take to plan a trip.²⁴⁷ The first step in this process was consultation.²⁴⁸ Within two months of pregnancy, potential customers “[could] consult [Ada] for free according to [their] actual situation.”²⁴⁹ The consultation introduced customers to the process, provided pricing information, and gave individualized evaluations depending on the client’s situation.²⁵⁰

²⁴² *Id.*

²⁴³ *Business Search*, CA. SEC. OF STATE, <https://bizfileonline.sos.ca.gov/search/business>; Committee Interview of Miami Mama Owner (Oct. 20, 2022).

²⁴⁴ *About Us*, US BABY ADA, <http://www.usbabyada.com/About/>.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Having A Child Process*, US BABY ADA, <http://www.usbabyada.com/Process/>.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

The cost per customer varied depending on the services and housing accommodations selected.²⁵¹ Ada provided several different packages starting at \$22,000 going up to \$38,000.²⁵² The company’s website informed visitors that “the cost of having a baby in the United States is complicated.”²⁵³ In addition to the costs directly associated with the company, “there are hospital doctor fees, certificate fees, and air ticket fees.”²⁵⁴ The chart below from Ada’s website provides estimates for each of the associated costs.

Charge items	Consulting fee	Visa service	Transportation	Accommodation meals	Doctor's fee	Hospital expenses	medical insurance	Yuesao care	Baby ID
Charger	Our company	Our company	airline	Our company	Doctors	hospital	Insurance company	Yuesao	Service staff, U.S. government
Include content	Consultation services before signing a contract	Full counselling before visa	Round-trip ticket	Food, accommodation, and other consumption during the period of labor in the United States	Medical services such as obstetric inspection and production	Medical services such as obstetric inspection and production	Various insurances such as travel insurance and maternity insurance	Care during confinement	The cost of the baby's handling of documents such as US passports and Chinese travel certificates
Estimated cost	0	0	About 1WRMB from	Minimum 17,500 dollars from	3000-5000 range	USD 3000-10000	Not equal	USD 4000 + tip	About \$ 270

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Following the consultation, customers executed a service agreement with Ada and paid an up-front deposit.²⁵⁶ According to the website, Ada’s system was different from other companies who require large deposits before leaving China.²⁵⁷

²⁵¹ *Homepage*, US BABY ADA, <http://www.usbabyada.com>.

²⁵² *Id.*

²⁵³ *Costing*, US BABY ADA, <http://www.usbabyada.com/Price/>.

²⁵⁴ *Id.*

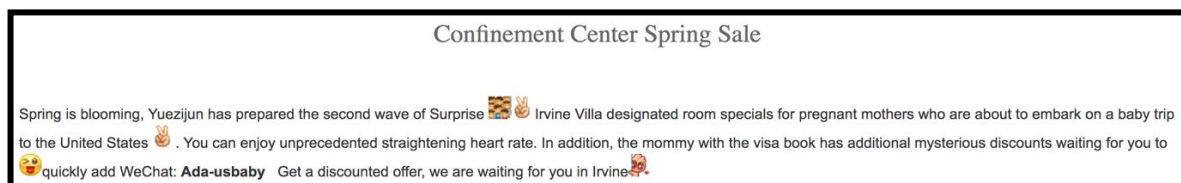
²⁵⁵ *Id.* A “yuesao” means “maternity matron” in Chinese. They are childcare experts who live with the family for several months after the delivery to care for the newborn child. Xia Yuanyuan, *The Age of the Super Nanny*, BEIJING REV. (May 5, 2016), http://www.bjreview.com/Nation/201605/t20160503_800055836.html#:~:text=But%20she%20prefers%20to%20be,better%20care%20of%20their%20babies.

²⁵⁶ *Having A Child Process*, US BABY ADA, <http://www.usbabyada.com/Process/>.

²⁵⁷ *About Us*, US BABY ADA, <http://www.usbabyada.com/About/>.

Ada only required a nominal deposit in China before departing for the United States, and allowed customers to “pay the remaining balance after their arrival.”²⁵⁸

Although the chart above lists the standard pricing, the Ada website indicates that the company had periodic sales.²⁵⁹ For example, the below screenshot shows Ada’s spring sale with “designated room specials for pregnant mothers who are about to embark on a baby trip to the United States.”²⁶⁰



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After the service agreement was signed, Ada provided tourists with a private consultant who offers “one-to-one guidance and service throughout the whole process.”²⁶²

2. Visa Consultation Services

In the next step of the planning process, the birth tourist submitted a visa application to a United States Embassy or consulate.²⁶³ Ada’s website suggested the sooner the visa application is submitted, the better.²⁶⁴ Ada assisted birth tourists with preparing the necessary materials for submitting a visa application.²⁶⁵

²⁵⁸ *Id.*

²⁵⁹ *Confinement Center Spring Sale*, US BABY ADA, <http://www.usbabyada.com/Topic/NoticeShow/109.html>.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Having A Child Process*, US BABY ADA, <http://www.usbabyada.com/Process/>.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

1. For mothers planning to go to the United States to have children, the earlier the visa recommendation of the American Confinement Center, the better. Our consultants will guide and assist you in preparing the necessary materials for the visa, and formulate the corresponding ones for you according to your materials and specific circumstances. Scheme.
2. The consultant of the confinement center will provide you with professional visa and interview guidance services and simulated visa tests.
3. U.S. visa is a necessary pass to have children in the U.S. Visa and interview guidance is a technical link that requires a wealth of visa experience. In this regard, the U.S. confinement center has a wealth of visa agency experience as your strong technical support.

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The screenshot above provides a more detailed breakdown of Ada's visa consultation services including simulated visa tests and other interview guidance.²⁶⁷ The website also claimed the customer first visa pass rate is as high as 85 percent.²⁶⁸

Once the birth tourist's visa was approved, Ada began formally planning the trip.²⁶⁹ Ada described this step in the process saying, "your wonderful trip to a foreign land is about to start, and the confinement center will help mothers make a itinerary plan."²⁷⁰

3. Housing and Recreation

Following the issuance of the visa, the birth tourist mother next arranged airfare and selected housing for her stay in the United States.²⁷¹ Ada describes its confinement center as an upscale community in Irvine, California with an environment that "is clean and elegant, safe and comfortable."²⁷² The community had all modern accommodations including air conditioning, fully equipped kitchens, internet, and a shuttle service.²⁷³ The screenshot below provides a full listing of services.

²⁶⁶ *Visa*, US BABY ADA, <http://www.usbabyada.com/Visa/>.

²⁶⁷ *Id.*

²⁶⁸ *Homepage*, US BABY ADA, <http://www.usbabyada.com>.

²⁶⁹ *Having A Child Process*, US BABY ADA, <http://www.usbabyada.com/Process/>.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Nutrition Package*, US BABY ADA, <http://www.usbabyada.com/Preferential-price/>.

²⁷³ *Id.*

Ada International Group's confinement center-Ada Dad's Maternal and Child Club

- An upscale community located in Irvine / Yorba Linda, Los Angeles, USA. The environment is clean and elegant, safe and comfortable, and the transportation is everything. -Twenty minutes drive.
- New villas and decorations, central air conditioning, good lighting, 24-hour security and iron door management, with large luxury suites, luxury suites, standard junior suites, standard elegant rooms, etc., to meet the needs of various consumption budgets, each room is With independent TV and water heater, the public space is fully equipped with kitchen, washing and drying, dishwasher, refrigerator, high-speed WIFI Internet access, free international calls (China, Hong Kong and Taiwan)
- Provide itinerary planning, driver transfer includes: shuttle service \ Daily life, routine hospital obstetrics inspection, sightseeing and shopping, you can communicate with special needs and will do your best to cooperate. You only need to eat, drink, sleep, sleep, buy and play in the United States. We are responsible for everything else.
- Meals provide exquisite meals and confinement diets
- Provide free baby license agency
- Specially clean the room and clean the room, change the bed linen and bathroom supplies
- Advanced daily necessities, baby daily necessities, new bed linen and bathroom supplies

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A prospective birth tourist mother had a series of options when selecting housing for their stay.²⁷⁵ Ada's website listed about a dozen different suites ranging from luxury to standard accommodations.²⁷⁶ Each suite had a description of its features and included photos of the bedrooms, bathrooms, and kitchen.²⁷⁷ Below is the description provided for one of Ada's luxury suites.

Ada House-113 luxury suite

The Eastwood Village in the Irvine villa community, parks, swimming pools, spas, basketball courts, barbecue areas, etc. within the community can be used free of charge. The villa provides hot and cold water 24 hours, central heating and cooling air conditioning, free wifi high-speed Internet, refrigerator, oven, microwave, dishwasher, TV, washing machine, dryer and other electrical appliances. The spacious and bright open kitchen has professional chefs who will carefully prepare delicious dishes, nutritious meals for delivery and confinement meals. The grassy backyard allows you to relax in the afternoon. Travel is very convenient, near the No. 5 freeway. It takes 10 minutes by car to reach Chinese supermarkets, Laomei supermarkets, Korean supermarkets, Chinese restaurants, Starbucks, and banks, and 20 minutes to major shopping centers, beaches, clinics, and hospitals. Ada's Dad's Maternal and Child Club is your best choice to honestly and legally go to the United States to have children!

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As shown above, Ada emphasized the complex's recreational activities including parks, swimming pools, spas, basketball courts, and grilling areas.²⁷⁹ The payment to Ada included access to all of these amenities and did not involve additional fees.²⁸⁰ Beyond those recreational activities, Ada arranged for customers "to go shopping and play at least three times a week, play on the beach/in the city every week, and go out to eat every week."²⁸¹ This is in addition to "three meals a

²⁷⁴ *Id.*

²⁷⁵ *Confinement Center*, US BABY ADA, <http://www.usbabyada.com/Confinement-center/>.

²⁷⁶ *Id.*

²⁷⁷ *Ada House-113 luxury suite*, US BABY ADA, <http://www.usbabyada.com/Confinement-center/MonthShow/28.html>.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Having A Child Process*, US BABY ADA, <http://www.usbabyada.com/Process/>.

day, two snacks, unlimited supply of milk, soy milk, fruits and desserts, ect. throughout the day.”²⁸² Ada summarized the experience saying customers “only need to eat, drink, sleep, shop and play in the United States, and we will take care of everything else.”²⁸³ Below is a picture of the swimming pool on Ada’s complex from the Ada website.



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4. Healthcare

After housing, birth tourists made healthcare arrangements for the delivery of the baby. Ada’s website listed eleven California area hospitals where birth tourist mothers could deliver their child.²⁸⁵ Each hospital listed on the website was described in detail, including the size, ranking, and features of the hospital.²⁸⁶

For example, the website profile for Fountain Valley Regional Medical Center, stated it “is a large general hospital, in which the obstetrics and gynecology is the strongest.”²⁸⁷ It adds further that “the qualifications of the doctors serving this hospital are very top-notch.”²⁸⁸ The Ada website clarified that the hospital has “Chinese doctors and bilingual nursing staff to provide you with comprehensive

²⁸² *Id.*

²⁸³ *Nutrition Package*, US BABY ADA, <http://www.usbabyada.com/Preferential-price/>.

²⁸⁴ *Ada House-Swimming Pool*, US BABY ADA, <http://www.usbabyada.com/Confinement-center/MonthShow/26.html>.

²⁸⁵ *Hospital*, US BABY ADA, <http://www.usbabyada.com/hospital/>.

²⁸⁶ *Fountain Valley Regional Medical Center*, US BABY ADA, <http://www.usbabyada.com/hospital/HospitalShow/29.html>.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

care.”²⁸⁹ In addition, each hospital profile listed the doctors who offer their services at that hospital.²⁹⁰

The website provided additional information on the doctors themselves. Each doctor had a profile listing their educational background, the hospitals where they work, and the address of their private clinics.²⁹¹ Some profiles provided additional background on how long they have practiced and other specialties.²⁹²

During the final step of the process and once the mother delivered the child, they return to the confinement center to recover.²⁹³ There, Ada staff provided care of the baby 24 hours a day while the mother recovered.²⁹⁴ During this period, Ada offered as many as five meals per day.²⁹⁵

B. Miami Mama

1. Company Description, Consultation, and Pricing

In 2004, Miami Mama began operations in California, Oregon, and Washington.²⁹⁶ In 2009, it moved to Miami upon request of their customers.²⁹⁷ Miami Mama had approximately 30 employees who provide “high-quality translation and will accompany [customers] throughout [their] stay in Miami.”²⁹⁸ The company also had branch offices in Russia and Ukraine to provide information about services offered by Miami Mama.²⁹⁹

The company described its main source of capital as “healthy children born in the conditions of modern American medicine and surrounded by the most comfortable climate on the planet, in Miami.”³⁰⁰ The website claimed customers trust the company with “the most responsible thing in life—the birth of a child!”³⁰¹ On an annual basis, Miami Mama served between 50 and 80 birth tourists.³⁰²

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ US BABY ADA, <http://www.usbabyada.com/doctors/DoctorsShow/3.html>.

²⁹² US BABY ADA, <http://usbabyada.com/Doctors/DoctorsShow/7.html>.

²⁹³ *Having A Child Process*, US BABY ADA, <http://www.usbabyada.com/Process/>.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *About Company*, MIAMI MAMA, <https://miami-mama.com/about.html>.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ Committee Interview of Miami Mama Owner (Oct. 20, 2022).

³⁰⁰ *About Company*, MIAMI MAMA, <https://miami-mama.com/about.html>.

³⁰¹ *Id.*

³⁰² Committee Interview of Miami Mama Owner (Oct. 20, 2022).

Miami Mama’s customers were primarily Russian and “people of various professions and ages, with different levels of income and well-being.”³⁰³ The company’s website provided assurances of confidentiality because clients are often “the wives of dignitaries, oligarchs, and celebrities” as shown below.³⁰⁴ Regardless of status, Miami Mama maintained that all customers share the common desire “to lay a solid foundation for [their child’s] happy and stable future.”³⁰⁵

The company's clients are often people of high profile: the wives of dignitaries, oligarchs and celebrities, or celebrities themselves, athletes, actresses, public figures, and representatives of show business. For such people, it is very important that their personal information is not disclosed.

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In addition to medical professionals, Miami Mama employed “licensed medical translators, specialists in the purchase of strollers and other baby items things, document preparation specialists, professional English teachers, [and] personal assistants in grocery and industrial stores.”³⁰⁷ According to the website, Miami Mama’s “whole process [was] completely thought out based on our many years of practice.”³⁰⁸

During the first step in the process, Miami Mama held “consultation meetings” with the expecting mothers.³⁰⁹ All clients signed a contract with Miami Mama and provided a prepayment for future services.³¹⁰ These meetings included discussion of how to prepare for the trip and the services provided by the company.³¹¹

Miami Mama offered four different birth tourist packages starting at \$6,900 and going up to \$49,000 for the VIP package.³¹² That cost varied depending on hospital and doctor selected by the customer.³¹³ The VIP package, for example, included consultation from American doctors while still in Russia, a private room at the hospital, and an unlimited driver service.³¹⁴ The screenshot below provides additional detail on the items included with each package.

³⁰³ *About Company*, MIAMI MAMA, <https://miami-mama.com/about.html>.

³⁰⁴ *Confidentiality*, MIAMI MAMA, <https://miami-mama.com/konfidencialnost.html>.

³⁰⁵ *About Company*, MIAMI MAMA, <https://miami-mama.com/about.html>.

³⁰⁶ *Confidentiality*, MIAMI MAMA, <https://miami-mama.com/konfidencialnost.html>.

³⁰⁷ *About Company*, MIAMI MAMA, <https://miami-mama.com/about.html>.

³⁰⁸ *Id.*

³⁰⁹ *Childbirth in Miami*, MIAMI MAMA, <https://miami-mama.com/organizacziya-rodov-v-majami.html>.

³¹⁰ Committee Interview of Miami Mama Owner (Oct. 20, 2022).

³¹¹ *Childbirth in Miami*, MIAMI MAMA, <https://miami-mama.com/organizacziya-rodov-v-majami.html>.

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *VIP service package*, MIAMI MAMA, <http://miami-mama.com/price/price-v.html>.

<p style="text-align: center;">MINI Price: \$ 6,900</p> <p>You speak English confidently, travel a lot and you plan to be with someone close to you throughout your stay in Miami, but you need support and assistance in the following areas:</p> <ul style="list-style-type: none"> - selection of a leading obstetrician-gynecologist for conducting ... <p style="text-align: center;">More details >></p>	<p style="text-align: center;">STANDARD Price: \$ 19,900</p> <p>A great opportunity to avoid troublesome and tedious, but necessary moments in the organization of comfortable childbirth. The following services are included in this package:</p> <ul style="list-style-type: none"> - selection of a leading obstetrician-gynecologist for conducting ... <p style="text-align: center;">More details >></p>
<p style="text-align: center;">VIP Price: \$ 49,900</p> <ul style="list-style-type: none"> - conducting pregnancy with a leading obstetrician-gynecologist, - giving birth in one of the best hospitals in South Florida, - assistance in preparing a full package of American and Russian / Ukrainian documents for the baby, - certified birth attendance 	<p style="text-align: center;">PREMIUM Price: \$ 27,900</p> <ul style="list-style-type: none"> - conducting pregnancy with a leading obstetrician-gynecologist, - giving birth in one of the best hospitals in South Florida, - assistance in preparing a full package of American and Russian / Ukrainian documents for the baby, - certified birth attendance

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The website acknowledged the State Department’s January 2020 visa policy change.³¹⁶ In recognition of the change, the company said “many have heard about the changes that have come into force in the procedure for issuing visas to the United States.”³¹⁷ The website further noted “[s]ince January 24, 2020, a restriction has been introduced on the issuance of American visas to pregnant women.”³¹⁸ Along with the emergence of the COVID-19 pandemic, this rule change contributed to the company’s decision to shut down operations.³¹⁹

2. Visa Consultation Services

Miami Mama also helped birth tourists apply for a U.S. visa. Miami Mama touted its expertise in the area saying, “there are cases when independent attempts to obtain permission to enter the country end in refusal.”³²⁰ According to the website, this “is why before going to the American embassy, it is necessary to carefully prepare and enlist the support of specialists.”³²¹

Miami Mama helped customers gather the necessary documents for their visa applications.³²² Miami Mama claimed this was an imperative service because customers “can not only clearly explain, but also document the purpose of [their]

³¹⁵ *Childbirth in Miami*, Miami Mama, <https://miami-mama.com/organizacziya-rodov-v-majami.html>.

³¹⁶ MIAMI MAMA, <https://miami-mama.com>.

³¹⁷ *Id.*

³¹⁸ *Id.*

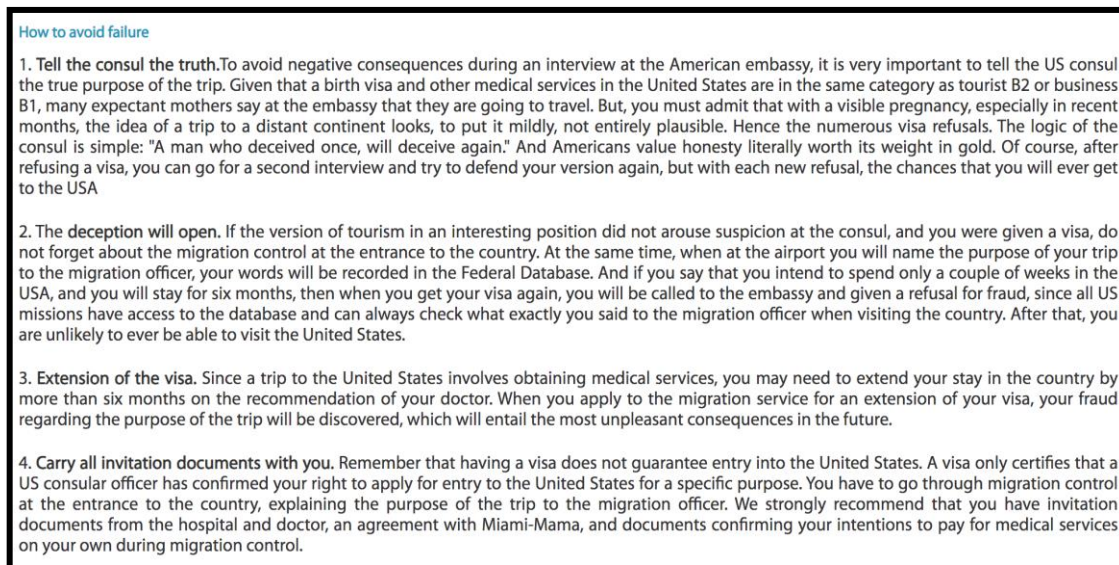
³¹⁹ Committee Interview of Miami Mama Owner (Oct. 20, 2022).

³²⁰ *Visa to USA*, MIAMI MAMA, <https://miami-mama.com/viza.html>.

³²¹ *Id.*

³²² *Id.*

trip, which will significantly increase the chances of obtaining a visa.”³²³ The documents prepared by the company included “registration of the expectant mother in an American hospital and a personal invitation from the doctor.”³²⁴ The website reaffirmed the company’s pride in this work, and that “almost everyone who turned to us for help receives US visas without any problems.”³²⁵ The screenshot below outlines Miami Mama’s detailed procedures for how to avoid U.S. visa denial.



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Miami Mama’s website also had a separate immigration page stating “parents of babies born in the United States have every chance of obtaining a permanent residence permit and living and working in the United States without waiting for the child to come of age.”³²⁷ The website then listed several ways for birth tourist parents to achieve this.³²⁸ These include the diversification lottery, L-1 visas, and EB-5 visas.³²⁹

Of the options listed, Miami Mama claimed the diversification lottery is “the easiest and most affordable way for everyone to get the coveted ‘green card’ and become a US resident.”³³⁰ The page included instructions on how to enter the lottery and that no payment is required unless the individual is selected.³³¹

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ *Immigration*, MIAMI MAMA, <https://miami-mama.com/immigraciya.html>.

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ *Id.*

If customers are not selected for the lottery, Miami Mama suggested they consider applying for an L-1 visa which the company touts as the most effective and affordable way of business immigration.³³² State issues L-1 visas for intracompany transfers who do business in the United States.³³³ There are several requirements for L-1 visas including that the petitioning company be “the same firm, corporation, or other legal entity, or parent, branch, affiliate, or subsidiary thereof, for whom the beneficiary has been employed abroad.”³³⁴ Another is that the beneficiary be “a manager, executive, or an employee having specialized knowledge, and is destined to a managerial or executive position or a position requiring specialized knowledge.”³³⁵ According to Miami Mama’s website, after “the US company has been in existence for at least one year, you can apply for a Green Card.”³³⁶

The final immigration option described by Miami Mama is the EB-5 visa.³³⁷ Under the EB-5 Immigrant Investor Program, foreigners can obtain a green card for making investments that create jobs in the United States.³³⁸ EB-5 investors, as well as their spouses and unmarried children under 21, are eligible for green cards if they: (1) make the required commercial investment in the United States; and (2) create 10 full-time jobs for U.S. workers.³³⁹

To assist customers interested in EB-5 opportunities, Miami Mama provided the information of one of its “partners” Charles Raether, a “highly qualified immigration lawyer.”³⁴⁰ Raether is the founder and managing partner of AmLaw Group³⁴¹ He received his law degree from Georgetown University and is a graduate of Moscow State University.³⁴²

According to Miami Mama, 100 percent of green card petitions submitted by AmLaw Group were approved by USCIS.³⁴³ In addition, the company asserted “the AmLaw Group enjoys special prestige among Russian investors under the EB-5 investor visa” and that Raether himself “has a deep understanding of the Russian business environment and mentality.”³⁴⁴

³³² *Id.*

³³³ 9 FAM 402.12-4.

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Immigration*, MIAMI MAMA, <https://miami-mama.com/immigraciya.html>.

³³⁷ *Id.*

³³⁸ U.S. Dep’t of Homeland Sec., U.S. Citizenship & Immig. Serv., *EB-5 Immigrant Investor Program*, (2022), <https://www.uscis.gov/working-in-the-united-states/permanent-workers/eb-5-immigrant-investor-program>.

³³⁹ *Id.*

³⁴⁰ *Immigration*, MIAMI MAMA, <https://miami-mama.com/immigraciya.html>.

³⁴¹ *Charles Raether*, AMLAW GROUP, <https://www.amlawglobal.com/about-us/charles-raether/>.

³⁴² *Id.*

³⁴³ *Immigration*, MIAMI MAMA, <https://miami-mama.com/immigraciya.html>.

³⁴⁴ *Id.*

3. Housing and Recreation

After birth tourists secured their visa, they arranged flights and housing for their stay.³⁴⁵ The website reminded potential customers they “will be in the US for a minimum of 3 months, usually more.”³⁴⁶ Miami Mama’s peak birth tourist season ran from October through April with rental prices peaking during that timeframe.³⁴⁷ The website estimated that an apartment with a living room, bedroom, and kitchen costs between \$2,200 and \$2,800 per month.³⁴⁸ All payments were made in advance for the duration of their stay.³⁴⁹



The above screenshot is the view from one of the company’s premium listings.³⁵¹ During the summer months, the apartment rented for \$3,500 per month and \$4,000 per month during the winter.³⁵² The apartment complex offered

³⁴⁵ *Organization of childbirth in the USA*, MIAMI MAMA, <https://miami-mama.com/vse-o-rodakh-v-ssha.html>.

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Beachwalk Two-Bedroom Apartment on the 30th Floor*, MIAMI MAMA, <https://miami-mama.com/apartments/2bdr-30-floor-beachwalk.html>.

³⁵¹ *Id.*

³⁵² *Id.*

amenities such as a gym, pool, and a beach service.³⁵³ The suite “features a fully equipped kitchen, Italian furnishings, a spacious living room with panoramic floor-to-ceiling windows, a master bedroom with a king-size bed and a twin bedroom.”³⁵⁴

Beyond the luxury housing accommodations, Miami Mama offered recreational activities including yacht charters.³⁵⁵ The website described the 66-foot yacht as “our huge floating island—a favorite toy of all children, cruises for several days in the direction [of the] Bahamas or Key West.”³⁵⁶ The yacht featured a full kitchen, “4 deluxe cabins with private bathrooms, luxurious leather upholstery, teak dining table, air conditioning, wifi, grill and the loudest music system.”³⁵⁷ Finally, “for lovers of speed and extreme sports,” the yacht also had a jet ski.³⁵⁸



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³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Yacht Charter*, MIAMI MAMA, <https://miami-mama.com/arenda-yahty.html>.

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ *Id.*

4. Healthcare

Miami Mama claimed to work with renowned Florida doctors who delivered the children of “American and Russian movie and sports stars and other world famous celebrities.”³⁶⁰ The company helped customers select a hospital satisfying their preferences and recommended a doctor based on their pregnancy.³⁶¹ According to the website, several doctors were also Russian speakers.³⁶² After a selection was made, “Miami Mama staff [helped tourists] arrange a contract with a doctor for the provision of medical services for the birth of the child.”³⁶³ If the child requires additional treatment after birth, Miami Mama helped “to obtain the most favorable conditions for paying for the treatment for the newborn, as we have established long-term relationships with hospitals and financial departments.”³⁶⁴

Miami Mama claimed to work only with doctors with twenty years of experience who practice out of “the best private hospitals.”³⁶⁵ In addition, the company received “the exclusive right to work with one of the best doctors at Mount Sinai Hospital.”³⁶⁶ This doctor allegedly delivered the grandchildren of President Lyndon Johnson.³⁶⁷ Another doctor, practicing out of Broward Medical Center, has repeatedly delivered the children of “many Russian stars and famous people.”³⁶⁸ According to a former Miami Mama employee, the doctors largely set their own prices.³⁶⁹

The company offered birth tourists the option of seven different hospitals in the Miami area.³⁷⁰ Each hospital listed had an individual profile detailing the features and accommodations.³⁷¹ For example, the profile for North Shore Medical Center explains that it “strives to provide patients with the utmost in comfort and care by offering the most advanced medical technology in the hands of highly trained professionals.”³⁷² The website describes the rooms as being decorated “in the style of a luxurious hotel room, where new mothers can feel as comfortable as

³⁶⁰ *Childbirth in Miami*, MIAMI MAMA, <https://miami-mama.com/organizacziya-rodov-v-majami.html>.

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ *About Company*, MIAMI MAMA, <https://miami-mama.com/about.html>.

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ *The doctors*, MIAMI MAMA, <https://miami-mama.com/vrachi/>.

³⁶⁹ Committee Interview of Miami Mama Owner (Oct. 20, 2022).

³⁷⁰ *Hospitals*, MIAMI MAMA, <https://miami-mama.com/hospitals.html>.

³⁷¹ *North Shore Medical Center*, MIAMI MAMA, <https://miami-mama.com/hospitals/north-shore-medical-center.html>.

³⁷² *Id.*

possible.”³⁷³ To give a better sense of the room, there were virtual video tours of the rooms.³⁷⁴

Much like the California birth tourism company described above, Miami Mama had a page listing all of the doctors who offer their services to the company.³⁷⁵ Each physician profile included educational background, the hospital at which they practice, and other relevant credentials.³⁷⁶

VII. Conclusion

The Committee’s investigation demonstrates the prevalence of birth tourism in the United States and how it demeans the naturalization process by monetizing the privilege of U.S. citizenship. The State Department and CBP should work together to better understand the breadth of birth tourism in the United States. Congress should also clarify the Immigration and Nationality Act to exclude birth tourism as a permissible basis for temporary travel to the United States.

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *The doctors*, MIAMI MAMA, <https://miami-mama.com/vrachi/>.

³⁷⁶ MIAMI MAMA, <https://miami-mama.com/vrachi/doktor-stiven-silvers.html>.