

CONSULTATION RESPONSE – 11/10/19

Law Commission: Building Families through Surrogacy: A New Law

Background

ILPA is a professional association founded in 1984, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with a substantial interest in the law are also members. ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, to act as an information and knowledge resource for members of the immigration law profession and to help ensure a fair and human rights-based immigration and asylum system. ILPA is represented on numerous government, official and non-governmental advisory groups and regularly provides evidence to parliamentary and official enquiries.

Introduction and methodology

ILPA has focussed only on those questions which involve an element of immigration law, these are all found in chapter 16 of the consultation document. ILPA sent the call for evidence out to its members, and has compiled the responses below. Please note that we have only listed questions to which we have received a response from members.

Detailed responses

Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Experience of applying for a child to be registered as a British citizen

By Home Office standards in general, the experience of ILPA members is that UKVI provides a good service in processing these applications. Once biometrics have been enrolled, the application is usually approved within a couple of weeks.

However, significant delays are often caused by the biometrics process itself. Over the last year, one ILPA member has had a client wait three weeks to even receive the biometrics letter, however this is unusual.

The biggest delay by far is arranging a biometrics appointment with the local partner. Two examples given are from the past ten months, two in Ukraine and one in Ghana. In both cases the local partner was TLS but the booking process was different.

In the first Ukrainian case, the ILPA member emailed the centre repeatedly only to be ignored. From the time of getting the letter until the biometrics were enrolled took a period of eight weeks.

In the second Ukrainian case, the ILPA member emailed repeatedly without a response, so the clients who were fortunately in Kiev eventually just showed up in person and were able to arrange an appointment. It took three weeks to secure an appointment.

In the Ghanaian case, there were four children involved and it was physically impossible to secure appointments until four months in the future. Again, in that case, the clients eventually travelled in person to the visa centre and were able to book appointments. It still took four weeks to secure these appointments.

Applicants should not have to attend in person in order to book a biometric appointment, and in the first Ukrainian case mentioned above, this was not possible as they were staying in another city miles away.

Intended parents are already under vast amounts of stress and anxiety. These levels of inefficiency and total shortfalls in the booking process bring enormous extra amounts of stress and pressure.

This is a wider issue with overseas visa application centres but the problem is particularly acute with surrogacy cases, where the parents are frequently not residents of that country and where every extra week spent overseas entails great emotional and financial cost.

In the days before children had to enrol biometrics, these applications were being processed in a week. Given that the biometrics enrolment entails nothing more than taking a photograph of the baby, the whole process seems unnecessary and adds substantial amounts of time.

ILPA therefore recommends that the requirement for baby biometrics is removed, and that this will make a significant difference to the lives of everyone involved.

ILPA also recommends that the online application process is amended so that it asks at the beginning of the form if it is a surrogacy matter so that it can be identified as such easily and prioritised as appropriate.

Experience of applying for a British passport

ILPA members have had mixed experiences with applying for British passports in surrogacy cases. While sometimes HMPO are processing these applications efficiently and sensitively and more quickly than other passport applications, other times there has been a lack of recognition on the part of HMPO of the urgency required in surrogacy cases.

Further, the submission process in countries such as Ukraine is highly problematic. These again require an appointment with a local visa application centre and the same issues arise as above in actually securing such an appointment.

ILPA members have also reported that employees of local VACs have made unhelpful and incorrect remarks on supporting documentation, advised applicants to remove essential documents or complained because irrelevant documents have not been provided (e.g. birth certificate of intended father who was born overseas, when the baby has in fact already been registered as British citizen) and thereby caused applicants unnecessary anxiety and stress. There have also been complaints about further documentation being requested weeks after the application has been submitted.

One possible solution may be the issuing of Emergency Travel Documents for children who have already been registered as British. It would also be useful if clarity can be provided as to what documents will be provided in surrogacy applications made in each country.

92. We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

There are some concerns that have been raised that this proposal could potentially complicate matters by spreading out the submission process unnecessarily. However, ILPA is supportive if such a process is designed in a way that would ensure parents are aware of what will be required of them to register their child and obtain a passport after the birth, as often parents only realise this after the birth when they are already outside the UK.

93. We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

ILPA members have said that the application process is perhaps a bit confusing and complicated for parents, however, this is not specific to the surrogacy process and is a function of all immigration applications made through UKVI.

One member reported that the last two applications made were approved within a couple of months of submission having paid extra for the priority service. This is very much in line with other family visa applications.

ILPA members reported that the inter-country surrogacy and immigration (within and outside the rules) policy is out of date and should be consulted on and re-written.

94. (i) We provisionally propose that it should be possible to open a file, and being the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth. Do consultees agree?

ILPA members agree that parents should be able to open a file pre-birth.

94. (ii) We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules. Do consultees agree?

ILPA members agree with the proposal to bring these applications within the Immigration Rules, however reiterates the comment at Q93 that the policy needs to be updated and that this is the more pressing issue.

94. (iii) We provisionally propose that: (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate. Do consultees agree?

ILPA agrees with the proposals.

94. (iv) We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

If the proposal to remove the time limit on applications for parental orders is removed then ILPA agrees that it would not make sense to retain the time limit on applying for a parental order in the case of visa applications.

However, it should continue to be a requirement of the visa route itself that parents apply for a parental order generally and can prove they have done this. It is important that a child is not brought to the UK without the adults involved understanding the requirements to obtain parental responsibility.

95. We provisionally propose that it should be possible to open a file, and begin the process for applying for an EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

ILPA agrees with this proposal.

97. We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Yes, and ILPA strongly recommends that this process is done in consultation with lawyers who specialise in this type of work.

98. We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

ILPA's agrees with this proposal as there are concerns about the risk of exploitation.

99. We provisionally propose that: (a) the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

(b) before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law. Do consultees agree?

Concerns have been raised about this, as it is unclear that it would ever be possible to achieve (b) and there is a risk that it could give rise to exploitation.