

Travel Advice for International Intended Parents During COVID-19 Crisis (Video Transcript)

Rich: Hi, everybody, this is Rich and Molly at International Fertility Law Group. We thought we would reach out to everyone and talk a little about one of the things that we as assisted reproduction attorneys are facing every day during the COVID-19 pandemic, and these are the issues of international intended parents and how they get to the U.S. during the travel ban, what they need to think about while they're here, and then how they get back home, given the travel bans and the lockdowns of various government agencies.

Getting To The U.S.

Molly: So, Rich, can you tell us a little about getting here?

Rich: So, one of the first things you need to do, just generally speaking, is you need to plan in advance. You need to be planning in advance for the various travel documents you might need to make the trip and also the 14-day quarantine period.

Molly: Now what happens with visas and plane tickets, can you talk a little bit about that?

Rich: So, keep in mind that visas and ESTAs may not be automatically renewed. They might even be cancelled during the midst of these travel bans. So, you need to be thinking ahead about that and looking into whether your current ESTA or visa is still valid. You also need to look into... whether you'll need a special visa or some other exception to the travel ban. Now the presidential proclamation on the travel bans has included exceptions for the immediate family members or guardians of a family member here in the U.S. to travel to the U.S., so that is a valid travel ban exception that you need to be working toward in order to enable yourself to travel here. As you're doing that, you'll need to prepare for these special exception documents by gathering as much administrative proof as you have that you're traveling for your child. If you're traveling for a surrogacy, you most likely will have either a pre-birth order or some other pre-birth documents connecting the fact that you are the parent of this child yet to be born. You should also have an attorney letter, a letter from your law firm, explaining your connection to the child as the intended parent and legal parent, and also a letter from your doctor verifying the same connection, that you are the intended parent through a surrogacy, and that the doctor has been assisting you with this process of building your family via assisted reproduction....

Some of our clients have been able to get a special visa—we've seen this happen in Switzerland, France and Spain—so they have not only used these letters that we mentioned, the attorney letters and the doctor letters; they've also had to be prepared with many other documents, and to be prepared to answer many other questions about your travel, your travel plans, the length of stay, your quarantine plans, very detailed questions about your plans to self-quarantine, and then they may ask you about the legal parent status and the status of your pregnancy and whether there are any pregnancy complications. On the other hand, we've seen some of our clients get to the airport with no questions asked, but I do think it's best to be prepared to answer those questions, to have that documentation, and addressing this with the U.S. Embassy or Consulate that's nearest to you in advance of your travel.

Now, for parents who are unable to get here, keep in mind: the hospitals can always call you. They can call you so you can make medical decisions for your baby, so your baby will not go unattended without your input. The only time that the hospital couldn't reach you is when you are on a plane, for instance, so just keep in mind the hospitals can reach out to you directly. If for any reason you are unable to get here, then you need to be thinking about having a temporary, stand-by, or a backup guardian in place. This is a person with some type of health care power of attorney to make decisions for your child, to take custody of your child upon discharge from the hospital, to take care of any financial obligations (e.g., for medical expenses), etc.... while the baby is here, and then possibly also to assist in obtaining the child's birth certificate and the passport. It is important that these documents be drafted according to the relevant state law where the birth is occurring, so make sure you're consulting with an attorney licensed to practice in that state so that those documents are drafted appropriately.

Molly: Now, Rich, would you ever let the surrogate be that guardian, be the person making medical decisions?

Rich: ...In our experience, that should really be the last resort. You actually have another option that you could potentially take advantage of before needing to resort to the surrogate caring for the child—to reach out to local, private adoption agencies. Many of these private adoption agencies have “cradle care” homes, and these are people who've had criminal background checks run; they have been vetted and screened to care for a child temporarily. So they're well suited to take care of your child or children if you're in that situation. And then, if that is not available, then as a last resort, then maybe consider having the surrogate act as a guardian. But again, keep in mind that this would contravene the court order and all the legal documentation you've prepared for your surrogacy, plus there are also some mental health aspects in regards to her bonding with the child, so it's better for many reasons not to resort to that unless you absolutely have to.

Backing up for a moment, any temporary guardian that you might appoint, keep in mind they need to be able to travel as well. Also, it might be advantageous to think about a guardian who lives close to or in the state where the birth will be occurring, and, if they don't live in the state in the U.S. where the birth is occurring, also look into whether there are any intra-state travel bans. These travel bans and all government policies are changing somewhat frequently, so it's best make sure you're up to date on every single possible travel ban before you engage a temporary guardian to help you out.

Issues to Address Once Here In the U.S., and Getting Home

Molly, tell us what you need to be thinking about and handling once you get here.

Molly: So the first and most exciting part is the birth, right? And most parents are very excited to be here and to be a part of that. But you have to have a realistic picture that there are a lot of hospitals that aren't letting parents in for the birth right now. And that's going to be something you have to deal with and have a plan in place that both you and the surrogate are comfortable with. So make sure you discuss with the agency and discuss with your surrogate about everyone's comfort level and how you want to handle this.

And I think it's a really nice suggestion that you can write a letter to your future child or your future children about what this would have been like except for what's going on right now, so that you can kind of have an expression of your feelings and you have this going out. And it's also maybe not a bad idea to show that to the hospital staff, because I think if they see this they'll get to see what's really in your hearts at the moment, and if there are any exceptions that can be made, I bet that is where you're going to see it happen, when they get to see how personal this is.

So that's just a little something to be aware of. Now when you're at the hospital, this is also where some of the first birth certificate paperwork gets filled out that eventually gets sent off to Vital Records. And the thing with birth certificates right now is that processing times might be different than what we're used to, and that's really jurisdictional [that's going to vary depending on where the surrogate gives birth; what state and what county within that state]. When it comes to the birth certificate, make sure you've talked to your lawyer here in the United States about what's going on in that particular area so that you can have a proper expectation of how long it will take to get a birth certificate.

Rich: What's next, after the birth certificate is issued?

Molly: Once you have the birth certificate, the next step is getting the passport. Now, typically, without the COVID-19 virus, you would go straight for the U.S. passport, and you would return home on that. And it's still possible to get the U.S. passport; it takes much longer now, because the passport offices are only issuing emergency, expedited passports in what they call a life-or-death situation. Well, arguably we do have one of those situations, because we want the parents to return to their home country or their home with their child and not over-crowd the U.S. health care system during this global health crisis. Plus, there are a host of other problems that they would have by having to stay here longer than necessary. Be sure to talk to your lawyer who's got the boots on the ground here so that you can be advised on what's working best in your situation. The other option you have is to go ahead and go straight for that passport for your home country by working with your home country local consulate office near where your surrogate is giving birth. If that's something you're going to do, you're going to need to prepare paperwork, which your U.S.-based lawyer may be able to help you with.

Rich: Is there anything else in addition to getting a home-country passport that might be an option for international intended parents for the baby's travel documents?

Molly: Yes. A *laissez passer*, which means "let it pass" in French, is a way to travel where your home government actually issues emergency travel documents, which gives the child permission to travel without having a passport in place, but this has been a little hit and miss.

As a group of professionals across the United States, we're all coming together, and we're talking about what's working and what's not working. So, again, talk to your lawyer in the United States, and make sure they're on top of all of this news, so that you know what options you have. Know there is a huge collaboration in our ART community here in the United States where we are sharing this information, so that everybody has knowledge of all the options that are available.

Rich: Thanks, Molly. And of course, keep in mind that these regulations, policies, and restrictions.... they're changing on a frequent basis. So keep up to date with your local attorney and with your U.S. attorney, and if you have any additional questions, you can always email me at Rich@IFLG.net or Molly at Molly@IFLG.net.

Thank you, and stay safe, everybody.