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STATE DEPARTMENT TO ISSUE RULES RESTRICTING U.S. TRAVEL FOR PREGNANT FOREIGNERS

Rules designed to crack down on what Trump administration calls 'birth tourism'

By Michelle Hackman
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WASHINGTON – The State Department is adopting a new set of rules that will make it tougher for pregnant foreigners to visit the U.S. on tourist visas, an effort to prevent individuals from coming to the U.S. to give birth.

The new rules unveiled on Thursday, which take effect Friday, are aimed at cracking down on what the Trump administration calls “birth tourism.” They form another plank in the administration’s long-running effort to restrict access to the U.S., both to people looking to immigrate and others, particularly from certain countries, from visiting at all.

Under the U.S. Constitution, almost all babies born in the U.S. are granted U.S. citizenship.

The new rules direct consular officers in foreign embassies to deny tourist visas, known as B visas, to any pregnant woman they believe is looking to travel to the U.S. to give birth. It will be the responsibility of the pregnant woman to convince officers she wants to visit the U.S. for a primary reason other than to give birth.

The effect of the new rules is likely small, because tourist visas are typically issued for 10 years, meaning a pregnant woman could enter the U.S. on a valid visa she was awarded years earlier.

State Department regulations governing visas didn’t previously refer to pregnant women, and visa forms didn’t ask women to specify whether they are pregnant. Guidance sent to consular officers this week directs officers to ask women about pregnancy not as a matter of course but only if an officer suspects the woman intends to remain in the U.S. through the birth of her child.

Visual cues can be enough for an officer to ask questions about pregnancy, a senior state department official told reporters Thursday, though they won’t use pregnancy tests.

Should an officer decide a woman is attempting to come to the U.S. to give birth, the decision is likely final. Foreign nationals looking to appeal the decisions of consular officers in U.S. courts have seen little success.

“This rule change is necessary to enhance public safety, national security, and the integrity of our immigration system,” the White House said in a statement.

According to the Centers for Disease Control and Prevention, about 10,000 babies were born in the U.S. to parents who are foreign residents in 2017, the last year for which data was available, up from about 7,800 in 2007.

The government doesn't maintain statistics on how many parents come to the U.S. with the purpose of giving birth to children for American citizenship. The State Department notes in the text of its new rules that, though it doesn't have reliable statistics on instances of birth tourism, "reporting from U.S. embassies and consulates has documented trends showing an increasing number of B visa applicants whose stated primary purpose of travel is to give birth in the United States."

In the Northern Mariana Islands, a U.S. territory in the Pacific Ocean, pregnant travelers from some Asian countries that don't require visas for entry can be turned back if they are found to be lying about their purpose of travel, or if they come to the U.S. planning to have a medical procedure, such as giving birth, but can't prove they have the funds to pay for it. More tourists than residents gave birth in the territory in 2018. The Wall Street Journal reported that one Asian airline had required a pregnancy test of a passenger who appeared to be pregnant and was bound for Saipan, the largest of the Northern Mariana Islands. If those passengers are denied entry, airlines are responsible for flying them home.

Consular officers would have been unlikely to admit a visa applicant even without the new rules in place if she admitted she intended to travel to the U.S. to give birth, said Sarah Pierce, a policy analyst with the Migration Policy Institute, a nonpartisan think tank in Washington.

"It's much more of a flashy statement than a real policy change that's going to have a big effect on the ground," Ms. Pierce said.

President Trump has long criticized foreigners and people living in the U.S. without authorization who give birth to children in the U.S., referring to the children as "anchor babies." In October 2018, about a week before the midterm elections, Mr. Trump said he planned to sign an executive order revoking birthright citizenship, the automatic right to citizenship granted to anyone born in the U.S. regardless of the parents' citizenship status.

In August 2019, Mr. Trump said he was still weighing the move. "We are looking at that very seriously," he said. "You walk over the border and have a baby, congratulations, the baby is now a U.S. citizen."

Most legal scholars agree that such a move would be unconstitutional. Birthright citizenship, widely seen as a pillar of U.S. immigration law, is protected by the Constitution's 14th Amendment and unbroken Supreme Court precedent. The Justice Department's official position, posted on its website, is that the citizenship provision can be altered only by a constitutional amendment.

The birth tourism rules are one of numerous moves the Trump administration has taken to restrict access to the U.S. by foreign travelers and immigrants. The administration is planning to expand one of its highest-profile policies next week, known as the travel ban, adding up to seven new countries to the list that will face significant new travel restrictions.

A separate policy, known as the public-charge rule, would impose a wealth test on immigrants looking to move to the U.S. The Migration Policy Institute said that change could cut immigration in half from Asia, Africa and Latin America. The administration has asked the Supreme Court to lift a lower court ruling blocking the rule from taking effect, and the high court could issue a decision on the matter as soon as this week.

– Courtney McBride contributed to this article.