

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

February 08, 2018

Number: **2018-0004**
Release Date: 3/30/2018

CC:ITA:B05
GENIN-131731-17

152.09-00

Dear

This letter responds to your request for information dated September 21, 2017.

In your request, you ask whether a United States citizen who files a joint federal income tax return with his foreign wife may claim as a dependent the foreign wife's minor son (the United States citizen's stepson) who is not a citizen or national of the United States.

Section 152(a)¹ generally defines the term "dependent" as a qualifying child or a qualifying relative. Among other requirements, section 152(c) provides that a "qualifying child" must be the child of the taxpayer, a descendant of such a child, or a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of one of these relatives.

Section 152(f)(1)(A) defines a child in part as a stepson of the taxpayer. Section 152(f)(1)(B) provides in part that a legally adopted individual of the taxpayer, or an individual who is lawfully placed with the taxpayer for legal adoption by the taxpayer, shall be treated as a child of such individual by blood.

Notwithstanding the preceding paragraph, section 152(b)(3)(A) generally provides that the term "dependent" does not include an individual who is not a citizen or national of the United States unless such individual is a resident of the United States or a country contiguous to the United States. As an exception to this rule, section 152(b)(3)(B) provides that section 152(b)(3)(A) shall not exclude any child of a taxpayer (within the meaning of section 152(f)(1)(B) [i.e., adopted children]) from the definition of "dependent" if—

¹ References to sections in this letter refer to sections of the Internal Revenue Code of 1986.

- (i) for the taxable year of the taxpayer, the child has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, and
- (ii) the taxpayer is a citizen or national of the United States.

This exception is expressly limited to adopted children. It does not apply to stepchildren of a United States citizen who have not been adopted by the United States citizen or lawfully placed with the United States citizen for adoption.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See section 2.04 of Rev. Proc. 2018-1, 2018-1 I.R.B. 1, 9 (Jan. 2, 2018). If you have any additional questions, please contact me or _____ at _____.

Sincerely,

Jason D. Kristall
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Office of Associate Chief Counsel
(Income Tax & Accounting)